Optimize Capital Markets

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June 18th, 2014

The Secretary
Ontario Securities Commission
20 Queen Street West, 22nd Floor
Toronto, ON
comments@osc.gov.on.ca

RE: Proposed Prospectus Exemptions

Dear Sirs and Madams,

We appreciate the opportunity to comment on the OSC Prospectus Exemption. We want to first commend the Ontario Securities Commission in the substantial efforts and resources which it has dedicated to assessing the benefits which new sources of capital can bring to the Canadian economy while remaining committed to protecting Canadian accredited investors and issuers.

The significant positive impacts which Crowdfunding can have on the Canadian economy are considerable in terms of growth, innovation, funding efficiency, and global economic leadership. The current funding gap in the SME sector and its potential remedy through Crowdfunding has been well documented and needs no further substantiation. However, beyond the inherent benefits of these additional capital flows, a properly implemented Crowdfunding source of capital will provide considerable benefits by way of new jobs, new technology, and a categorically stronger providence of tomorrow's entrepreneurial leaders.

About Optimize Capital Markets

Optimize Capital Markets is North America's leading Institutional Crowdfunding Portal, where Accredited Investors and Institutions can discover and trade in Private Investment Opportunities. Optimize Capital Markets connects accredited investors directly with businesses seeking to raise capital and other investment opportunities.

Optimize Capital Markets is a full-service investment bank with an Institutional Team which specializes in advising and raising capital for leading growth enterprises. We focus on both private and public entities which need capital to maximize their business activities. Using our firm's track record and expertise, our sole objective is to secure value-add transactions for the investors and companies we represent.

Regards,

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APPENDIX A - OSC OM Prospectus Exemption- Requests for comment

General

1) We note that the existing OM Prospectus Exemption available in other CSA jurisdictions has not been frequently used by start-ups and SMEs. Have we proposed changes that will encourage start-ups and SMEs to use the OM Prospectus Exemption? What else could we do to make the OM Prospectus Exemption a useful financing tool for start-ups and SMEs?

We believe the proposed changes to the OM Prospectus Exemption will highly encourage start-ups and SMEs to use this exemption. We believe that the OM Prospectus Exemption will be viewed as a much more effective way of raising capital to foster solid growth for start-ups and SMEs.

Issuer qualification criteria

2) We have concerns with permitting non-reporting issuers to raise an unlimited amount of capital in reliance on the OM Prospectus Exemption. Should we impose a cap or limit on the amount that a non-reporting issuer can raise under the exemption? If so, what should that limit be and for what period of time? For example, should there be a "lifetime" limit or a limit for a specific period of time, such as a calendar year?

In our opinion, implementing a cap on the amount of capital a company may raise using the OM Prospectus Exemption is not the right approach. We believe the emphasis should be placed on protectionary measures such as ensuring that registered investment dealers (EMDs and IIROC Members) would be the only permitted entities to market and distribute securities using this exemption. Furthermore, we feel the focus should continue to be on ensuring those investment dealers have properly filled out KYCs and that all trades which are executed are suitable for that client's particular situation. We believe that placing the emphasis on these measures would be a much more effective method of protecting the general investor public as opposed to implementing an arbitrary cap on the amount an issuer could raise using the OM Prospectus Exemption.

3) What type of issuer is most likely to use the OM Prospectus Exemption to raise capital? Should we vary the requirements of the OM Prospectus Exemption to be different (for example, disclosure requirements) depending on the issuer's industry, such as real estate or mining?

Based on our experience, we feel that non-reporting issuers who likely stem from private well-established businesses will be the ones most apt to using the OM Prospectus Exemption to raise capital. We also feel that there is a fairly equal representation across all sectors of companies that are looking to use the OM Prospectus Exemption.

4) We have identified certain concerns with the sale of real estate securities by non-reporting issuers in the exempt market. As phase two of the Exempt Market Review, we propose to develop tailored disclosure requirements for these types of issuers. Is this timing appropriate or should we consider including tailored disclosure requirements concurrently with the introduction of the OM Prospectus Exemption in Ontario?

We would take the view that the sooner the regulators can provide clarity around how each sector will be impacted by the proposed regulations the better. Consequently, we would encourage the regulators to provide any specific disclosure requirements concurrently with the OM Prospectus exemption.

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Types of securities

5) We are proposing to specify types of securities that may not be distributed under the OM Prospectus Exemption, rather than limit the distribution of securities to a defined group of permitted securities. Do you agree with this approach? Should we exclude other types of securities as well?

We support the approach to specify types of securities that may not be distributed under the OM Prospectus Exemption.

6) Specified derivatives and structured finance products cannot be distributed under the OM Prospectus Exemption. Should we exclude other types of securities in order to prevent complex and/or novel securities being sold without the full protections afforded by a prospectus?

We do not feel that there should be any other types of securities excluded from the OM Prospectus Exemption. In fact, we take the view that with the proper disclosure, derivatives and structured finance products should be included in the OM Prospectus Exemption so long as they are structured in such way that the risk and reward characteristics are clearly within a reasonable range and are being explained properly to potential investors.

Offering parameters

7) We have not proposed any limits on the length of time an OM offering can remain open. This aligns with the current OM Prospectus Exemption available in other jurisdictions. Should there be a limit on the offering period? How long does an OM distribution need to stay open? Is there a risk that "stale-dated" disclosure will be provided to investors?

In our opinion, there should not be a set time period in which an offering memorandum could stay open but rather base the timeline on whether the OM continues to accurately reflect the key characteristics of the underlying security. As soon as any of the key characteristics of the security or investment change in some material manner, than the OM should be updated immediately to reflect the change. In this way, investors will be always reviewing an accurate Offering Memorandum regardless of when the document was written.

Registrants

8) Do you agree with our proposal to prohibit registrants that are "related" to the issuer (as defined in National Instrument 33-105 Underwriting Conflicts) from participating in an OM distribution? We have significant investor protection concerns about the activities of some EMDs that distribute securities of "related" issuers. How would this restriction affect the ability of start-ups and SMEs to raise capital?

We firmly believe that the better approach is disclosure rather than an outright restriction. Restricting a registrant from participating in an OM distribution would be unfair in our opinion and put the designated issuers an unfair advantage. Although there are indeed potential conflicts of interest in these scenarios, we would recommend that disclosure be used to protect against these potential conflicts.

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*9) Concerns have been raised about the role of unregistered finders in identifying investors of securities. Should we prohibit the payment of a commission or finder's fee to any person, other than a registered dealer, in connection with a distribution, as certain other jurisdictions have done? What role do finders play in the exempt market? What purposes do these commissions or fees serve and what are the risks associated with permitting them? If we restrict these commissions or fees, what impact would that have on capital raising***?**

In the exempt market, there are many individuals who each play an integral role when it comes to the process of raising capital for a company. There are many situations which warrant a referral fee to these contributing individuals, and to limit or prohibit the payment of a referral fee would significantly reduce the number of capital raising transactions. As such, we do not believe that there should be prohibitions on paying referral fees and if that were to occur it would make it significantly harder for start-ups and SMEs to raise capital.

Investor qualifications – definition of eligible investor

10) We have proposed changing the $400,000 net asset test for individual eligible investors so that the value of the individual's primary residence is excluded, and the threshold is reduced to $250,000. We have concerns that permitting individuals to include the value of their primary residence in determining net assets may result in investors qualifying as eligible investors based on the relatively illiquid value of their home. This may put these investors at risk, particularly if they do not have other assets. Do you agree with excluding the value of the investor's primary residence from the net asset test? Do you agree with lowering the threshold as proposed?

A person's primary residence should not be considered as part of their investment portfolio or indicative of their investment capacity. Excluding this value in our opinion is a very sound preventative measure on the regulators behalf. Reducing the net asset test from $400,000 to a $250,000 threshold is also a prudent approach to determine if investors fall within the eligible criteria.

11) An investor may qualify as an eligible investor by obtaining advice from an eligibility advisor that is a registered investment dealer (a member of the Investment Industry Regulatory Organization of Canada). Is this an appropriate basis for an investor to qualify as an eligible investor? Should the category of registrants qualified to act as an eligibility advisor be expanded to include EMDs?

As a member of the Investment Industry Regulatory Organization of Canada is a registered and regulated corporation, we do believe that obtaining advice from such an entity is an appropriate basis for an investor to qualify as an eligible investor. Furthermore, we strongly suggest that the category of registrants deemed qualified to meet the requirements as an eligibility advisor should be expanded to include portfolio managers.

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Investment limits

12) Do you support the proposed investment limits on the amounts that individual investors can invest under the OM Prospectus Exemption? In our view, limits on both eligible and non-eligible investors are appropriate to limit the amount of money that retail investors invest in the exempt market. Are the proposed investment limits appropriate?

Placing such limits on the amount individual investors can invest is a prudent initial precautionary measurement that safeguards potential risks for both the eligible and non-eligible investors. However, as the OM Prospectus Exemption go into effect over next few years, we would encourage the regulators to revisit the limits and make adjustments when and where necessary.

Point of sale disclosure

13) Current OM disclosure requirements do not contain specific requirements for blind pool issuers. Would blind pool issuers use the OM Prospectus Exemption? Would disclosure specific to a blind pool offering be useful to investors?

The OM Prospectus Exemption is a beneficial tool for blind pool issuers and we feel it would greatly benefit the general investing public and companies seeking capital. Implementing specific disclosures to blind pool offerings would be an asset to investors as the characteristics of those investments differ when compared to individual issuer characteristics.

14) We are not considering any significant changes to the OM form at this time. However, we are aware that many OMs are lengthy, prospectus-like documents. Are there other tools we could use at this time (short of redesigning the form) to encourage OMs to be drafted in a manner that is clear and concise?

We would recommend that issuers include a one-page summary at the beginning of the Offering Memorandum outlining the key risks and returns of the investment opportunity in very plain and simple terms.

Advertising and marketing materials

15) In our view any marketing materials used by issuers relying on the OM Prospectus Exemption should be consistent with the disclosure in the OM. We have proposed requiring that marketing materials be incorporated by reference into the OM (with the result that liability would attach to the marketing materials). Do you agree with this requirement?

Linking the marketing materials to the OM Prospectus Exemption will make the process and document unnecessarily cumbersome. In respect to the issuer, taking this approach will incur additional and expensive legal costs to completing the OM. Having separate rules and regulations that pertain to marketing materials, abided by applicable guidelines as opposed to being linked to the specific OM Prospectus Exemption is far more favourable in our opinion.

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Ongoing information available to investors

16) Do you support requiring some form of ongoing disclosure for issuers that have used the OM Prospectus Exemption, such as the proposed requirement for annual financial statements? In our view, this type of disclosure will provide a level of accountability. Should the annual financial statements be audited over a certain threshold amount? If the aggregate amount raised is $500,000 or less, is a review of financial statements adequate?

In our opinion, we do support ongoing disclosure for issuers. However we believe that the threshold should be raised to $5 million. Below $5 million, we believe is detrimental to small and growing businesses that are not public companies. Subject to the threshold being above $5 million, we do feel is in the best interest of investors, as this type of disclosure and accountability will help protect the general investing public.

17) We have proposed that non-reporting issuers that use the OM Prospectus Exemption must notify security holders of certain specified events, within 10 days of the occurrence of the event. We consider these events to be significant matters that security holders should be notified of. Do you agree with the list of events?

We agree with the requirement to notify security holders of specified events within 10 days of the occurrence of such an event. It is absolutely critical that shareholders and investors alike are well aware of material events that happen within any company whether it is a reporting or non-reporting issuer.

18) Is there other disclosure that would also be useful to investors on an ongoing basis?

As the market adapts and accepts the proposed changes, more disclosure requirements will inevitably need to be implemented, but at this time we believe the current proposed changes cover ongoing disclosure more than sufficiently.

19) We propose requiring that non-reporting issuers that use the OM Prospectus Exemption must continue to provide the specified ongoing disclosure to investors until the issuer either becomes a reporting issuer or the issuer ceases to carry on business. Do you agree that a non-reporting issuer should continue to provide ongoing disclosure until either of these events occurs? Are there other events that would warrant expiration of the disclosure requirements?

We agree that non-reporting issuers that use the OM Prospectus Exemption should provide the specified ongoing disclosure to investors until the issuer either becomes a reporting issuer or the issuer ceases to carry on business. For the general investing public, it is necessary to be able to make informed investment decisions or discern how an issuer has performed.

At this time, we foresee no other events that would warrant expiration of the disclosure requirements. Certainly as the market will provide feedback over time, events may arise which would prompt a warrant change to these current regulations.

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Reporting of distribution

20) We believe that it is important to obtain additional information to assist in monitoring compliance with and use of the OM Prospectus Exemption. Form 45-106F11 would require disclosure of the category of "eligible investor" that each investor falls under. This additional information is provided in a confidential schedule to Form 45-106F11 and would not appear on the public record. Do you agree that collecting this information would be useful and appropriate?

So long as this information will not appear in the public domain, we agree that this is appropriate to ensure that the OM Proposed Exemption is being used properly.

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APPENDIX D – Crowdfunding Prospectus Exemption and Crowdfunding Portal Requirements Crowdfunding Prospectus Exemption

Issuer qualification criteria

1) *Should the availability of the Crowdfunding Prospectus Exemption be restricted to non-reporting issuers?*

Placing restrictions to specific categories of issuers, whether they are reporting or non-reporting is not a prudent or fair approach. Crowdfunding represents an enormously large new source of growth capital and reporting issuers are just as much in need of growth capital as non-reporting issuers. In the best interest of all types of issuers, we advise that the availability of the Crowdfunding Prospectus Exemption be available to all issuers.

2) Is the proposed exclusion of real estate issuers that are not reporting issuers appropriate?

In our opinion, all issuers should have equal access to this new source of capital. It would be unjust for real estate issuers to be excluded simply based on the premise of the sector in which they operate. As such, we do not feel the exclusion of real estate issuers is appropriate.

3) *The Crowdfunding Prospectus Exemption would require that a majority of the issuer's directors be resident in Canada. One of the key objectives of our crowdfunding initiative is to facilitate capital raising for Canadian issuers. We also think this requirement would reduce the risk to investors. Would this requirement be appropriate and consistent with these objectives?*

The marketplace should be open to all companies regardless of whether or not the issuer's directors reside in Canada. Setting up these parameters, such as the one proposed may in fact encourage regulators in other countries to follow suit. These types of barriers would be detrimental to free flow of capital, impacting the Canadian marketplace as well as directly affecting companies operating in Canada. We feel that imposing this sort of regulation would not be appropriate and would limit the amount of capital companies in Canada are capable of raising through crowdfunding initiatives.

Offering parameters

4) The Crowdfunding Prospectus Exemption would impose a $1.5 million limit on the amount that can be raised under the exemption by the issuer, an affiliate of the issuer, and an issuer engaged in a common enterprise with the issuer or with an affiliate of the issuer, during the period commencing 12 months prior to the issuer's current offering. Is $1.5 million an appropriate limit? Should amounts raised by an affiliate of the issuer or an issuer engaged in a common enterprise with the issuer or with an affiliate of the issuer is subject to the limit? Is the 12-month period prior to the issuer's current offering an appropriate period of time to which the limit should apply?

We agree that it is a prudent approach to set limits on the amount any one issuer may raise in a given time period. However, we feel that the proposed limit should be increased to $3 million instead. We also suggest that an affiliate of the issuer should also be subjected to the $3 million suggested limit. In regards to the time period, we agree that the 12 month period allotted prior to the issuer's current offering is appropriate to which this limit should apply.

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5) Should an issuer be able to extend the length of time a distribution could remain open if subscriptions have not been received for the minimum offering? If so, should this be tied to a minimum percentage of the target offering being achieved?

We believe there should not be any specified length of time which a distribution could remain open to receive subscriptions. As such, we feel that an issuer should not have to extend any time period or satisfy any minimum threshold in order to continue to receive subscriptions for their offering.

Restrictions on solicitation and advertising
6) Are the proposed restrictions on general solicitation and advertising appropriate?

We believe that specifying a minimum set of documents which must be received by an investor is very much in line with their best interests. However, limiting receiving additional information beyond that set of documents or limiting the avenues or channels with which they receive information or advertisements on the investment opportunity is to the detriment of the issuer seeking capital and to the detriment to investors seeking as much information as possible.

Investment limits
7) The Crowdfunding Prospectus Exemption would prohibit an investor from investing more than $2,500 in a single investment under the exemption and more than $10,000 in total under the exemption in a calendar year. An accredited investor can invest an unlimited amount in an issuer under the AI Exemption. Should there be separate investment limits for accredited investors who invest through the portal?

Accredited investors have already been deemed capable of managing their own investments and making their own informed investment decisions. As such, we believe that placing separate investment limits on what they could potentially be investing through a crowdfunding portal is inappropriate and unfair from both the AI perspective as well as the company seeking growth capital.

Statutory or contractual rights in the event of a misrepresentation
8) The Crowdfunding Prospectus Exemption would require that, if a comparable right were not provided by the securities legislation of the jurisdiction in which the investor resides, the issuer must provide the investor with a contractual right of action for rescission or damages if there is a misrepresentation in any written or other materials made available to the investor (including video). Is this the appropriate standard of liability? What impact would this standard of liability have on the length and complexity of offering documents?

Currently, the statutory right to sue in the event of a misrepresentation contained in section 130.1 of the *Securities Act (Ontario)* only applies to an offering memorandum delivered to an investor in connection with a distribution under a limited number of specific exemptions. Proposing that the Crowdfunding Exemption be designated as an exemption to which section 130.1 of the Act, would be an appropriate standard of liability to be held accountable for both issuer and investor.

It is important for market confidence that investors have a contractual right to sue for misrepresentation. As long as there is a provided guidance for issuers to understand how to satisfy the due diligence defense, we see this to be an appropriate measurement of liability for the investor.

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Provision of ongoing disclosure

9) How should the disclosure documents best be made accessible to investors? To whom should the documents be made accessible?

The Crowdfunding Prospectus Exemption proposes that the crowdfunding offering document must contain the disclosure document required by Form 45-108F1 and a certificate signed by the issuer in accordance with the applicable provision of Appendix A, stating: "This offering document does not contain a misrepresentation. Purchasers of securities have rights of action and withdrawal in the case of a misrepresentation".

Disclosure documents should only be made accessible to pertaining investors of the issuer's case. By prompting these necessary measurements, investors are able to make informed investment decisions which can also discern how an issuer or investment has performed, thus imposing a level of accountability to the issuer. These disclosure documents should be made available in writing and as means of communication should be made available by email or standard mail.

10) Would it be appropriate to require that all non-reporting issuers provide financial statements that are either audited or reviewed by an independent public accounting firm? Are financial statements without this level of assurance adequate for investors? Would an audit or review be too costly for non-reporting issuers?

In the best interest of the general investing public, it should be mandated that non-reporting issuers are required to provide financial statements that are audited or reviewed by an independent accounting firm. As suggested in the Crowdfunding Prospectus Exemption, on an annual basis, non-reporting issuers should be able to confidently provide their investors annual financial statements, a notice that discloses how the proceeds of a crowdfunding offering have been used and disclosure of specified events. Not providing financial statements at this level of assurance is generally not adequate for investors. Finally, whether or not an audit or review is too costly for non-reporting issuers, not taking the precautionary measurements poses a greater threat of loss for investors. This is far too important of a protection for investors to avoid and we strongly encourage implementing these necessary requirements.

11) The proposed financial threshold to determine whether financial statements are required to be audited is based on the amount of capital raised by the issuer and the amount it has expended. Are these appropriate parameters on which to base the financial reporting requirements? Is the dollar amount specified for each parameter appropriate?

We believe that regardless of the amount of capital companies are seeking through crowdfunding, financial statements that are audited or reviewed by an independent public accounting firm should be required. This factor is too important as a protective measurement to remove its requirement for some capital raises simply because of their size.

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Other

12) Are there other requirements that should be imposed to protect investors?

Based on the current and proposed requirements suggested by the regulators, we do not see any additional requirements as necessary. As the market continues to evolve and adapt however, additional requirements will become undoubtedly apparent.

Crowdfunding Portal Requirements

13) The Crowdfunding Portal Requirements provide that portals will be subject to a minimum net capital requirement of $50,000 and a fidelity bond insurance requirement of at least $50,000. The fidelity bond is intended to protect against the loss of investor funds if, for example, a portal or any of its officers or directors breach the prohibitions on holding, managing, possessing or otherwise handling investor funds or securities. Are these proposed insurance and minimum net capital amounts appropriate?

We fully support this proposed initiative, as net capital and fidelity bond insurance requirements are fundamental requirements to the financial stability of any financial intermediary.

Additional portal obligations

14) Do you think an international background check should be required to be performed by the portal on issuers, directors, executive officers, promoters and control persons to verify the qualifications, reputation and track record of the parties involved in the offering?

We strongly believe that there should be no difference in due diligence and background check requirements put on crowdfunding portals as compared with that of EMDS and IIROC Dealers.

Prohibited activities

15) The Crowdfunding Portal Requirements would allow portal fees to be paid in securities of the issuer so long as the portal's investment in the issuer does not exceed 10%. Is the investment threshold appropriate? In light of the potential conflicts of interest from the portal's ownership of an issuer, should portals be prohibited from receiving fees in the form of securities?

We feel that these restrictions would not be in the best interest of the general investing public. Conflicts of interest, whether perceived or actual, need to be managed and monitored. However, setting arbitrary thresholds or restrictions do not get at the root of the issue. Disclosing the potential conflict of interest is in our opinion a better approach.

16) The Crowdfunding Portal Requirements restrict portals from holding, handling or dealing with client funds. Is this requirement appropriate? How will this impact the portal's business operations? Should alternatives be considered?

We would deem this requirement as inappropriate and would put the crowdfunding portal's business operations at serious risk and disadvantage.

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Other

17) Are there other requirements that should be imposed on portals to protect the interests of investors?

Based on the current and proposed requirements suggested by the regulators, we do not see any additional requirements as necessary. As the market continues to evolve and adapt however, additional requirements will become undoubtedly apparent.

18) Will the regulatory framework applicable to portals permit a portal to appropriately carry on business?

We believe that the regulators have put forth excellent proposed changes to current regulations. However, we strongly believe that the due diligence requirements, licensing requirements, net capital requirements, and fidelity bond insurance requirements must be maintained at the same level as an exempt market dealer. Finally and in our opinion, limiting how much an accredited investor can invest in securities offered through a crowdfunding portal could very well put those investors and companies seeking capital at a severe disadvantage. This in turn could certainly impact the ability for a portal to carry on business.

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