



June 18, 2014

The Secretary
Ontario Securities Commission
20 Queen Street West, 22nd Floor
Toronto, ON M5H 3S8

VIA EMAIL

Attention: John Stevenson, Secretary
Email: comments@osc.gov.on.ca

Dear Sirs and Mesdames:

**Re: PROPOSED PROSPECTUS EXEMPTIONS AND PROPOSED REPORTS OF EXEMPT DISTRIBUTION IN
ONTARIO – NOTICE AND REQUEST FOR COMMENT**

NATIONAL INSTRUMENT 45-106 *PROSPECTUS AND REGISTRATION EXEMPTIONS*

COMPANION POLICY 45-106CP *PROSPECTUS AND REGISTRATION EXEMPTIONS*

**PROPOSED AMENDMENTS TO OSC RULE 45-501 *ONTARIO PROSPECTUS AND REGISTRATION
EXEMPTIONS***

PROPOSED MULTILATERAL INSTRUMENT 45-108 *CROWDFUNDING*

COMPANION POLICY 45-108CP *CROWDFUNDING*

**PROPOSED FORM 45-106F10 *REPORT OF EXEMPT DISTRIBUTION FOR INVESTMENT FUND ISSUERS
(ALBERTA, NEW BRUNSWICK, ONTARIO AND SASKATCHEWAN)***

**FORM 45-106F11 *REPORT OF EXEMPT DISTRIBUTION FOR ISSUERS OTHER THAN INVESTMENT FUNDS
(ALBERTA, NEW BRUNSWICK, ONTARIO AND SASKATCHEWAN)***

Open Avenue is launching Canada's first online real estate crowdfunding portal for accredited and eligible investors across the country except Ontario. Open Avenue would like to engage in equity real estate crowdfunding in those jurisdictions that are looking at the proposed equity crowdfunding framework set out in Proposed MI 45-108, however, the framework presently prohibits real estate transactions. This comment letter respectfully submits that not all real estate should be prohibited and specifically that income-producing real estate equity crowdfunding should be allowed since it:

- rehabilitates communities;
- creates jobs for small and medium-sized enterprises (**SMEs**);
- allows investors to own a tangible real estate asset; and

- provides regular cash distributions to investors in a known, accepted and easily understood asset class.

Information about Open Avenue and my real estate experience is set out in **Schedule A** attached hereto.

Our submissions of why cash-flowing real estate equity crowdfunding should be permitted under Proposed MI 45-108 are set out in Part I below for your consideration.

Part II discusses certain other issues and concerns we have with Proposed MI 45-108.

Part III discusses our issues and concerns involving Ontario's proposed offering memorandum exemption (the **OM exemption**).

Part I

1. Crowdfunding brings investment opportunities to the masses

Both real estate development and the investment world are at the cusp of a new paradigm shift, riding on the waves of the Internet and a population capable of leveraging the power of technology. We believe that technology has the power to facilitate transparent, secure and reliable investment opportunities for all types of investors including real estate opportunities. Figure 1 below illustrates how the internet can bridge that gap and an explanation that follows.

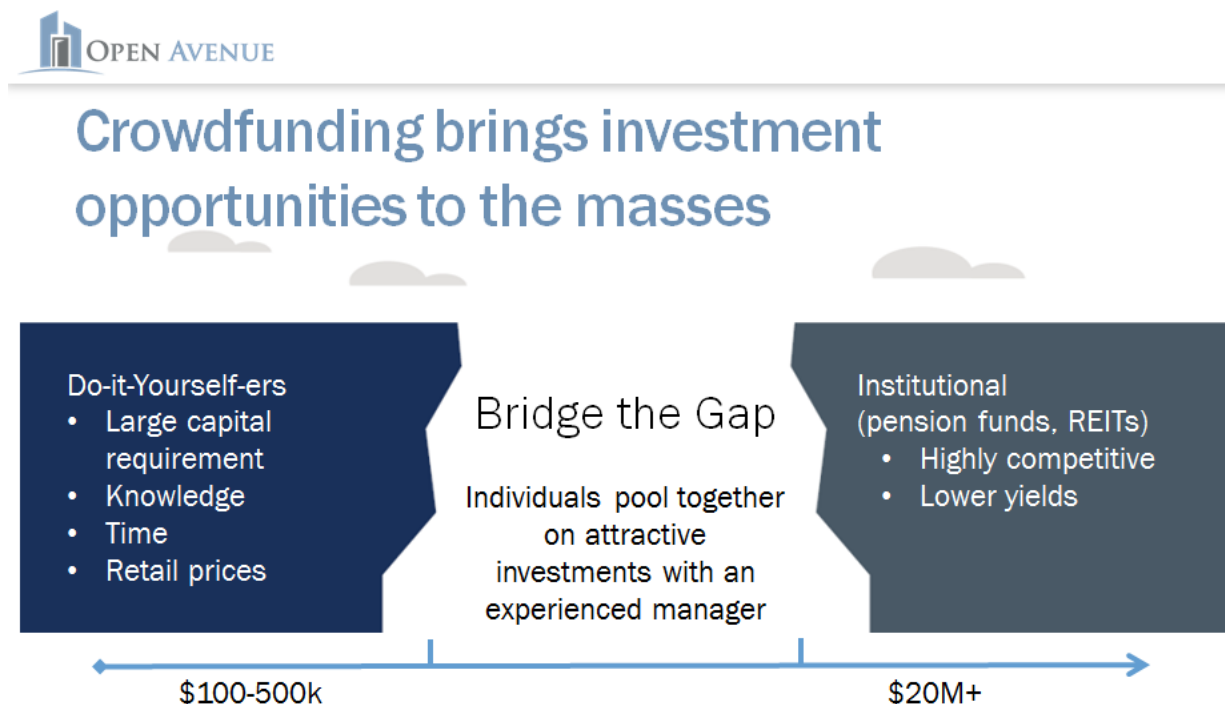


Figure 1: The real estate crowdfunding opportunity

Many Canadian investors are interested in investing in direct real estate but do not have the full capital required for an individual project, nor do they have the time or experience to manage a real estate investment on their own. Through equity crowdfunding, Open Avenue plans to bring real estate investment opportunities to the masses so that everyone can participate in real estate investment at an amount that fits into one's individual investment portfolio. There is a large opportunity for profitable real estate investments across Canada on projects that are out-of-reach of the Do-it-Yourself investment crowd but still too small for institutional investors. By pooling casual investors together, managed by an experienced real estate developer/property manager, we can invest in these projects and build our communities at the same time.

Real estate is a tangible asset that is easy for investors to understand and has a very simple and clear method of valuation. The funds required for a real estate project are well known at the initial pre-investment stage and can be accurately projected so that an investor has clear advance knowledge of where their funds are being allocated. This makes real estate an ideal candidate for equity crowdfunding.

2. Real estate investment has similar elements to traditional enterprises

A cash-flowing real estate investment is very similar to a traditional business. The asset generates income through rental income. It incurs traditional real estate expenses such as property tax, insurance, maintenance and property management. The asset will usually have a mortgage associated with it that must also be paid. When all expenses are paid including the mortgage, the asset generates cash-flow that is paid direct to investors. Investors also build additional equity in their investment through the mortgage principal amortization. Figure 2 below provides a sample real estate income statement and explains how real estate investments are similar to traditional enterprises with revenues and expenses and related returns. This is not new for investors.

Real estate investment has similar elements to traditional enterprise

Annual Revenue (Rental Income)	\$400,000
Operating Expenses	\$120,000
Net Operating Income (NOI)	\$280,000
Mortgage Interest (Year 1)	\$138,000
Mortgage Principal (Year 1)	\$83,000
Annual Cashflow	\$59,000
Cash-on-Cash Return	3.9%
Total Return (Year 1)	9.5%

Cash flow real estate investment does NOT rely on speculation or appreciation to provide reliable returns to investors.

Figure 2: Sample Real Estate Income Statement

Real estate investment is not modeled on a boom-bust scenario like many other asset classes – there are many profitable real estate investments that provide yield and cash flow to investors while not relying on speculation or market appreciation to provide returns.

Real estate also provides a built-in liquidity component which is a major benefit compared to a traditional start-up investment. Real estate investment offering documents will explicitly state the time period for the investment in detail. For example, many investments will be held for five to seven years, at which point the underlying asset will be sold on the open market and the proceeds will be returned to investors. Investors enter into the investment knowing when their investment will be returned.

3. Crowdfunding technology provides transparent access to investments.

As issuers, Open Avenue embraces disclosure and seeks to provide investors with very detailed levels of both accounting and operational transparency.

We have built a platform at Open Avenue that will disclose and make readily available on-line every single project contract and operating expense for investors, as well as detailed information about each tenant lease signed and rental income collected. An annual external audit will be conducted on each project to provide confirmation to investors that management has spent funds where they've been allocated. An illustration of a sample portfolio is set out in Figure 3 below.

Crowdfunding technology provides transparent access to investments



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SAMPLE PORTFOLIO

Note: All figures are fictional. Please see Investment Opportunities for projections.

INVESTMENT DOCUMENTS

CEDAR BROWNSTONES - KITCHENER, ON

Partnership Agreement
Annual Tax Document – 2012 T5013 Partnership Information Return

PROPERTY UPDATES

Cedar Brownstones – Cash Distribution – \$750 (4% annualized)
Sept 1, 2013

Cedar Brownstones - New Lease Signed – \$1495 Monthly (5% increase)
Aug 23, 2013

Cedar Brownstones - Cash Distribution – \$750 (4% annualized)
Aug 1, 2013

INVESTMENT SUMMARY

Property	My Investment	Market Value	YTD Dividends Paid	Yield
Cedar Brownstones	\$10,000	\$12,262	\$700	4.8%
Doon Village Brownstones	\$50,000	\$55,722	\$262	5.4%

INVESTMENT VALUATIONS

Property	2012 Annual Income	2012 Annual Expenses	Net Operating Income	All figures annualized		Estimated Market Value	Initial Value	Capital Growth	Dividends Paid	Total Return
				Debt Service	Valuation Cap Rate					
Cedar Brownstones	\$450,000	\$70,000	\$380,000	\$200,000	6.0%	\$6,333,333	\$6,200,000	2.2%	\$90,000	3.6%
Doon Village Brownstones	\$300,000	\$66,000	\$234,000	\$140,000	6.0%	\$3,900,000	\$3,200,000	21.9%	\$300,000	31.2%

Figure 3: Open Avenue Investor Management Dashboard

Open Avenue believes in transparency and disclosure not because regulators require it but because we see it as prudent business practice that investors should and will demand. Open Avenue welcomes and embraces all disclosure requirements and would be happy to work with the Ontario Securities Commission (the **OSC**) and other CSA members to develop suitable requirements that will protect investors and enable them to comfortably and securely invest in private real estate projects.

Disclosure aside, we believe even simple measures like installing a 24/7 webcam on project construction sites can provide another dimension of transparency that is difficult to replicate in alternative crowdfunded asset classes.

4. Investors have protection.

Real estate is a great asset for crowdfunding because the vast majority of the investment capital is stored in a physical, secure asset. In the event of mismanagement or fraud, investors have definitive legal recourse rights to make claims against their properties in order to partially recover their investments. Liens and other recourse measures do not easily exist in other crowdfunded businesses that contain few tangible assets. Investors in crowdfunded real estate would have direct title to their

asset as unitholders in a Limited Partnership that directly owns title to the asset. See the illustration of this ownership structure in Figure 4 below.

Investors Have Protection

- Limited Partnership Structure
 - Investors own title to the asset
 - Physical asset with legal recourse rights
 - General Partner can be removed
- Audit



Figure 4: Real Estate Investment Structure

Building trust with the equity crowdfunding investment community will be vital in the early stages and we believe the security and transparency of real estate will be very beneficial in attracting early investors to prove the equity crowdfunding investment model to the wider investment community.

5. Crowdfunding empowers the investor to build their community

Real estate crowdfunding enables local investors to participate in projects that have a direct impact on their community. No longer will local development decisions be made exclusively by financiers who have no direct connection to their investments. Local investors can invest small amounts into projects that they believe will make a positive impact on their community, while at the same time providing an investment return to local investors. This 'loca-investing' is very important for communities and businesses.

For example, Figure 6 illustrates the refurbishment undertaken by a developer involving the Lang Tanning Company in Kitchener, ON. The Lang Tannery was established in the 1860s and grew to become the largest leather producer in the British Empire in the mid-twentieth century. With the manufacturing decline in the late-twentieth century, the tannery went out of business. In 2007, the building was

bought by a real estate developer and transformed into an information and technology center, home to companies such as Google, Communitel, and Desire2Learn.



Crowdfunding empowers the investor to build their community



Figure 6: Community Building Opportunities in Kitchener-Waterloo

6. Crowdfunding creates opportunities and jobs for SMEs

Open Avenue firmly believes that equity real estate crowdfunding has the potential to provide a major lift to the Ontario economy. For example, if we raised \$1.5 Million in equity crowdfunding, that would enable us to finance a real estate project worth \$5.0 Million through the use of traditional leverage. In a typical \$5.0 Million new development project, roughly \$1.5 Million would account toward direct labour, benefiting many local SMEs. Through this single project, over 30 full-time jobs would be created at an annual salary of \$60,000. Another \$600-800 thousand dollars would be paid as development fees to the local municipality, as well as \$200-300 thousand dollars in servicing fees to the local utilities. A sample budget for a new development is set out in Figure 7 below.

Many local jobs and contracts for SMEs are created through a single project

Project Value	\$5,000,000
Construction Labour Costs	\$1,500,000
Professional Contracts	\$500,000
Development Fees to Municipal Gov't	\$600,000
Servicing Fees to Local Utilities	\$200,000
Land, Materials, Contingency, Soft Costs	\$2,200,000



A single crowdfunded real estate project can create 30+ local jobs at \$60,000 annually, plus contribute \$800,000 to the local municipality.

Figure 7: New Development Budget Sample

7. Potential Equity Crowdfunding Real Estate Opportunities

Through pre-launching Open Avenue and discussing the concept with many real estate developers across Canada, it has become apparent that there are a vast number of very lucrative development opportunities in our growing and intensifying cities but a lack of access to private capital to fund these projects.

Open Avenue believes that permitting real estate equity crowdfunding under Proposed MI 45-108 will not only offer a rewarding and profitable investment to the crowd, but it will release the capital required to help our cities meet their unique planning challenges as densities increase, affordable housing requirements grow and government budgets tighten, at no expense to the taxpayer.

Part II

Other Issues and Concerns with Proposed MI 45-108

CROWDFUNDING PROSPECTUS EXEMPTION – ISSUER QUALIFICATION CRITERIA

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

Please see Open Avenue's response in Part I above.

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?

This requirement is not consistent with the borderless nature of online business. Restricting board makeup to be majority Canadian is a serious barrier to building a scalable enterprise that can compete on the world stage. In the real estate sector, Open Avenue has already been in touch with American developers who wish to raise funds for projects located in Canada that would contribute to community building and support local SMEs.

CROWDFUNDING PROSPECTUS EXEMPTION – OFFERING PARAMETERS

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?

Yes, the issuer should be able to extend the length of time an offering remains open. In a lot of cases, 90 days may not be a sufficient amount of time to close a transaction. The Crowdfunding Exemption already states that an issuer must amend and restate any offering documents if the information ceases to be true and accurate.

CROWDFUNDING PROSPECTUS EXEMPTION – RESTRICTIONS ON SOLICITATION AND ADVERTISING

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

Yes, the proposed restrictions are appropriate.

CROWDFUNDING PROSPECTUS EXEMPTION – 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?

Open Avenue believes that the \$2,500 limit for accredited investors is very limiting and will make it very difficult for issuers to raise a sufficient amount of capital through the Crowdfunding Exemption unless accredited investors are able to invest larger amounts through the same portal. It will be very difficult to raise a sufficient amount of capital through a crowdfunding portal when limited to \$2,500 per investment. We believe that investors should be able to invest \$5,000 per investment.

Another major issue with the Crowdfunding Exemption is that often times “lead investors”, who are investing a significant amount in a project, are required in order to generate interest and attention from the crowd that the investment opportunity has merit. Preventing accredited investors from investing a

significant amount in an offering will prevent many potentially successful crowdfunding capital raising campaigns to not succeed.

Specific to the real estate industry - given the large capital requirements for real estate investments, many portals will have to rely on accredited investors to invest larger amounts of capital compared to crowdfunding investors in order to fully fund a project.

The proposed regulatory framework implies that portals cannot register as both a restricted dealer in order to raise capital through the crowdfunding exemption, as well as an exempt market dealer to raise capital through the OM and Accredited investor exemptions. This constraint is *extremely* limiting. Considering the arguments above for the need to have both the crowd and accredited investors co-invest in real estate investments, there is very little incentive for any real estate portal to register as a restricted dealer as the proposed regulatory framework presently stands since the current proposal prevents these portals from raising capital through other exemptions.

Open Avenue strongly believes that exempt market dealers should be able to operate a portal that accepts investments through both the Crowdfunding Exemption as well as the OM and Accredited Investor Exemption in order to efficiently raise capital whereby the “crowd” investors and accredited investors mutually benefit from each other’s involvement in an individual investment offering.

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?

Issuers should be responsible for complying with applicable regulatory regimes in jurisdictions where they are raising capital. Applying additional contractual obligations will make it very difficult for issuers to produce concrete and concise offering documents.

CROWDFUNDING PROSPECTUS EXEMPTION – PROVISION OF ONGOING DISCLOSURE

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

Disclosure documents should be made available to all investors online through the portal.

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?

Financial statements should be made available to all investors. For issuers raising less than \$500,000, a full audit will be too costly and will likely ruin the investment business case. A less costly review by an independent accounting firm would be more reasonable.

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?

Yes, these parameters are appropriate.

CROWDFUNDING PORTAL REQUIREMENTS – GENERAL REGISTRANT OBLIGATIONS

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?

Yes, these requirements are appropriate.

CROWDFUNDING PORTAL REQUIREMENTS – 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?

An international background check would be very costly to perform on all persons involved in an offering and would vastly increase the cost of raising capital and will not return many fruitful results if the persons involved in the issuance are Canadian citizens who have not conducted international business operations.

CROWDFUNDING PORTAL REQUIREMENTS – 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?

Yes, this investment threshold is appropriate. Portals should be allowed to have fees paid in the form of securities of the issuer.

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?

Until viable Canadian escrow platforms are in place, the ability to hold, handle and deal with client funds is required for portals in order for portals to ensure that investors are properly set up as shareholders before releasing the funds to the issuer.

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

We believe the protections in place are suitable for protecting investors and no further requirements are required.

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

There are significant challenges for portals to appropriately carry on business in the framework presently proposed. If accredited investors cannot invest large amounts of capital in a crowdfunded investment alongside investors using the Crowdfunding Exemption then it will not be practical for an issuer to raise funds through a restricted dealer (crowdfunding) portal. It will be extremely difficult to raise the entire capital amount when limited to \$2,500 per investor. Additionally, the crowdfunding industry requires known accredited investors investing large amounts of capital into an offering in order to function as an ecosystem.

Furthermore, as the Crowdfunding Exemption regulatory framework currently stands, there will be very little incentive for anyone to set up and operate a crowdfunding portal if they cannot also act as an exempt market dealer and accept investments through the OM Exemption and Accredited Investor Exemption.

In summary, the major challenges that must be addressed to create a suitable crowdfunded ecosystem include:

- The ability for accredited investors to invest large amounts of capital in a crowdfunded investment alongside investors using the Crowdfunding Exemption in the same issuer and through the same portal (see response for Question 7)
- The restriction on a portal holding, handling or dealing with client funds (see response for Question 16)
- The requirement for the majority of an issuer's directors be resident in Canada (see response for Question 3)

Part III

Issues and Concerns with the OM exemption

Open Avenue is interested in raising funds for real estate investments from the public and understand that doing so through the Internet would place us in the "business of trading securities" which would

require us to register as a dealer under applicable securities legislation. Accordingly, we have opted to register as an exempt market dealer (**EMD**) in certain jurisdictions in Canada.

However, when we are registered as an EMD, Ontario's proposed OM exemption would prohibit funds from being raised by a related issuer. This puts us in a catch-22 scenario – we have to register since we are in the business of selling securities over the internet, however, by registering as a dealer, we are now prevented from executing our original idea of raising funds over the Internet for real estate investments.

As experienced real estate developers and young technology-minded entrepreneurs, we saw the natural opportunity between the equity crowdfunding movement and real estate development to come up with the concept for Open Avenue. It is only natural that we would be offering related investments through the Open Avenue platform. ***It would be difficult for someone with no real estate affiliations to create a real estate crowdfunding portal and be able to adequately perform the necessary due diligence on the business case behind real estate investment opportunities.***

We do not plan to hide behind detailed disclosure documents to obfuscate the fact that Open Avenue will have related issuer investment opportunities. In fact, we wish to promote the fact that Open Avenue has a history of investments with other development firms in order to build trust with investors that experienced real estate professionals with a strong track record of success are managing the portal and performing the necessary due diligence on all offerings.

Many potential investors have expressed interest in investing in local community projects, and we see a strong opportunity to formalize the investments in a very public and transparent security offering under the OM exemption as an EMD through Open Avenue. We prefer this method instead of relying on the traditional private exemptions where disclosure and investor communication is potentially limited.

The business model around Open Avenue offering related investments to the crowd is no different than a Ford dealership wishing to sell Ford cars. We have built Open Avenue not to collect fees off a crowdfunding raise, but because we believe that we can provide secure and profitable real estate investments opportunities to the crowd that provide attractive returns and improve our cities. While our development activities are primarily in the Kitchener-Waterloo region of Ontario, we believe the opportunity exists to partner with local developers throughout Canada wishing to leverage the Open Avenue portal to raise funds from local investors in their communities. We know we can do this under the accredited investor exemption, but firmly believe this is best suited under the OM exemption and more importantly under Proposed MI 45-108.

Open Avenue would like to address some of the specific questions posed by the OSC relating to the OM exemption:

OM PROSPECTUS EXEMPTION – 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?

Real estate investment is a very capital-intensive asset class, so there should not be any caps on the amount that a non-reporting issuer can raise.

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?

Open Avenue has a strong opinion that Investment Funds should be able to use the OM exemption. In the real estate industry, an issuer may wish to raise capital to set up a fund to invest in multiple properties of similar nature as they become available in the marketplace (perhaps also segmented by asset class and/or geographic region). The offering documents would make clear to the investor the asset attributes and specific investment metrics that assets will be evaluated against for investment.

Due to the nature of real estate transactions and tight transaction closing timelines, the equity funds must sometimes be raised before determining which specific asset or group of assets is being purchased. It is unclear to Open Avenue whether this would be considered an Investment Fund by the Commission. If this investment structure is indeed considered an Investment Fund, then we would strongly recommend that Investment Funds be considered for the Offering Memorandum exemption.

Open Avenue has no problems with specific disclosure requirements for real estate offerings, but we would respectfully ask that this be adopted, if necessary, in a second phase of review. We recommend not delaying the release of the OM framework. Any industry-specific requirements should be developed as issues potentially arise and experience suggests that amendments are required.

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?

Similar to number 3) above, Open Avenue recommends not delaying the release of the OM exemption. Industry-specific requirements should be potentially evaluated once issuers and regulators gain experience with the new OM exemption and be adopted when the need arises.

OM PROSPECTUS EXEMPTION – 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?

There should not be a limit on the offering period. Many real estate investment opportunities may require the option to remain open indefinitely until a sufficient amount of capital is raised to undertake the project. The OM is already required to be updated if there is a material change in the business or the financials become stale.

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?

Please see our opening remarks regarding the related-issuer prohibition in Part III of this comment letter above. Open Avenue is strongly against this proposal.

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?

Finder’s fees are an important tool in enabling SMEs to access capital by enabling an issuer to outsource its marketing and allowing it to focus on its core business. There are many cases in the real estate industry where an unregistered party such as a realtor or mortgage broker may identify a potential investor and assist in raising capital for an issuer. Restricting finder’s fees to registered dealers would severely limit the ability of issuers to raise capital. Open Avenue believes that proper disclosure of finder’s fees can mitigate any risks.

OM PROSPECTUS EXEMPTION – 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?

We believe there should be consistency across all jurisdictions in regards to the definition of an eligible investor. Inconsistencies increase the cost of compliance for dealers and the cost of raising capital for issuers. An exempt market dealer will continue to have KYC and suitability obligations that take into account an individual investor’s financial situation so we believe that introducing an inconsistent net asset test for eligible investors is unnecessary.

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 an annual investment limit for eligible investors is very impractical for many investors. The main problem we have with this proposal is that many investors will invest in a given investment for a long period of time – perhaps five to ten years. Upon liquidation of an investment and distribution of initial capital and profits, they likely will look to reinvest their capital into new projects in a single year, after having spent many years not investing in private securities at all. However, with an annual investment limit, they won't be able to reinvest their capital appropriately.

The other problem is that an annual investment limit will create an incentive for dealers to sign up new investors as soon as their 12-month window expires to access the available capital within their limit before another dealer does first. This can create a distorted marketplace where dealers are aggressively selling investments that aren't in the best interest of the investor.

Open Avenue believes that exempt market dealers' obligations to conduct proper suitability and KYC reviews are an appropriate tool to determine whether an investment is appropriate for each investor. We realize that investment limits may be appropriate if there is no suitability review taking place, but if an exempt market dealer is conducting proper suitability reviews then investment limits are not appropriate and hinder capital raising for issuers and appropriate allocation of investment capital for investors.

The current limits of \$10,000 for non-eligible investors and \$30,000 are extremely limiting in a wide variety of circumstances and are not necessary when an exempt market dealer is conducting suitability reviews for each individual investment.

Consistency across all jurisdictions is important as well. Additional compliance obligations to determine how much investment room an individual has available to invest increases the cost of raising capital.

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?

Open Avenue has no problem with ongoing disclosure requirements. We see it as a prudent business practice to earn trust with investors and we will be providing ongoing disclosure through our online portal regardless of whether there is a regulatory requirement.

Regarding the condition to audit financial statements – we agree that for amounts of \$500,000 or less, a review of financial statements is adequate. If audited annual statements are required for small raises, it will often be cost-prohibitive for the issuer to raise any funds in the first place.

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 list of events.

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 with the ongoing disclosure requirements.

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?

Open Avenue believes that this requirement is appropriate.

Conclusion

Open Avenue applauds the OSC for its bold initiatives in the crowdfunding space and we believe Ontario is on the right path toward empowering both SMEs and investors alike in providing secure and profitable investment opportunities that will help shape and grow the Canadian economy for years to come.

We believe that real estate is a viable asset class for crowdfunding that will provide investors with stable and secure returns while supporting SMEs and creating jobs in the local economy.

As addressed in the comments above, we have a major concern about EMDs not being able to sell securities of related issuers through the OM exemption. We also believe that it is absolutely necessary that EMD portals be able to raise funds through both the proposed Crowdfunding Exemption and Accredited Investor Exemption in order to create a thriving crowdfunding ecosystem where the crowd invests alongside known accredited investors.

Lastly, we feel that the investment limits in the proposed OM exemption are not necessary when an EMD is conducting a suitability review for each investor.

We thank you for the opportunity to provide feedback and welcome any opportunity for further dialogue.

Sincerely,

Tim McKillican
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Schedule A

My History as a Real Estate Investor

By Tim McKillican



My name is Tim McKillican and I am the Founder and President of Open Avenue, a real estate crowdfunding portal based in Ontario. I am also a strategic investor in real estate, having invested in over \$30 Million worth of commercial real estate as the lead investor. I am also a founding member of the Equity Crowdfunding Alliance of Canada, whose mandate includes supporting, educating and developing the equity crowdfunding industry in Canada. As a University of Waterloo graduate in Computer Engineering, I am excited to bring real estate investing into the digital world.

The following outlines my history in the real estate investment world:

I was your typical casual investor in 2008 with a natural interest in real estate and some money to invest but no real experience as a handyman, and a full time job as a computer engineer that left me no time to dabble in real estate investment.

However, I knew that real estate was a natural complement to one's investment portfolio given its low correlation to the stock market and inflation hedge. I also knew that the [tech region in Kitchener-Waterloo was booming](#) and that demand for housing would likely be on the rise.

Looking for a place to start, I asked a close friend who was a real estate agent to find me some real estate investment opportunities. My friend connected me with another individual who looking for partners to invest in single-family home to duplex conversions.

My partner and I eventually purchased a property through an estate sale for \$120,000. We gutted the home and I invested \$30,000 to convert it into an upscale duplex. We refinanced the property at a newly appraised value of \$220,000 (a development profit of \$60,000 after financing fees) and began searching for our next opportunity.

I was hooked on real estate investment.

We continue to own 118 Weber St. today, with it positively cash flowing while also paying down the mortgage. I often think about had it not been for a chance introduction through our personal networks, I would never had the ability to invest in a great real estate investment opportunity and would be left wondering how to get in the real estate game with a full time job and no direct experience in managing properties.



First real estate investment at 118 Weber St. E. in Kitchener

Finding hidden development potential

Soon afterwards we did some detective work to find an unlisted old house near Rockway Gardens in Kitchener that the owner was selling privately. It turned out that the house had been vacant for 20 years and Gerry, the executor of his family's estate, was looking for a quick sale. We purchased the property for \$223,000 and quickly went to work on the designs to turn it into a four-plex.

Given the location across the street from Rockway Gardens and close proximity to the express-way, we figured that this property was an ideal opportunity to invest in and turn into a young professional's ideal living space. Each unit was decked out with stainless steel appliances, in-suite laundry and hardwood flooring. It was a hit with renters and when all was said and done it was re-appraised for \$525,000 for a development profit of \$125,000 after all expenses were paid. We continue to own 1510 King St. E. and it cashflows over \$1,000 per month while paying down the mortgage and building equity.



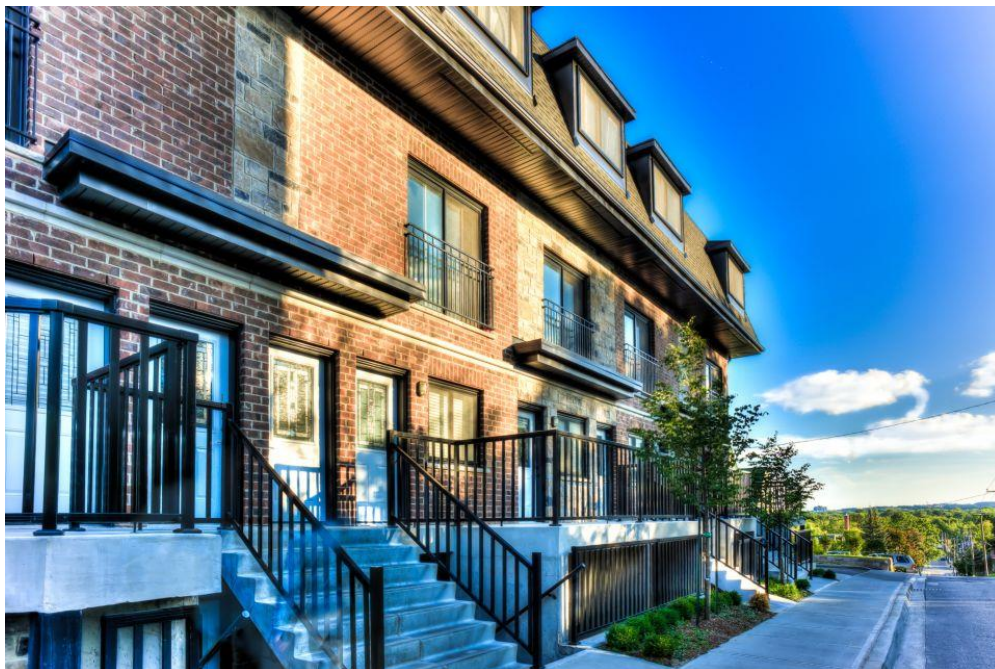
Single family home converted to four-plex at 1510 King St. E. in Kitchener

Our next project was an infill construction opportunity at 689 Doon Village Dr. near Conestoga College in Kitchener. There was an existing single family home on a very large corner lot that was ripe for a brownstone stacked-townhouse design. We purchased the property for \$240,000 and leased up the existing house to Conestoga students while we began the process of getting the approvals and permits for the 17-unit new construction.

Concurrent with the purchase at Doon Village Road, we continued our focus on developing many core properties in the Cedar Hill neighbourhood of downtown Kitchener. This location was close to all the vibrant development going on in downtown Kitchener and a stone's throw away from the proposed Light Rail Transit line currently under development throughout Kitchener-Waterloo. We purchased many distressed multi-family buildings and pursued the typical strategy of overhauling them into shiny new real estate properties.

One of our Cedar Hill properties was a five-plex located on the highest point of elevation overlooking the city. With continued growth in Kitchener and a demand for affordable rental stock in downtown Kitchener, we saw the opportunity for the brownstone stacked townhouse design if we could tie up the adjacent triplex property next door. We went to work and privately acquired the property to put our development plans into place.

After spending some time with the city to get the development approvals in place, concurrent construction began on brand new 17-unit and 36-unit townhouse designs at our Doon Village and Cedar Hill locations. Construction was completed in 2013 with appraised values of \$6.4M and \$3.6M respectively.



Cedar Brownstones in Cedar Hill, Downtown Kitchener

Connecting the crowd to real estate investment

I had achieved tremendous success investing in real estate and it naturally begged the question of why this simple real estate investment opportunity that I was afforded early on wasn't readily available to others interested in real estate. We were achieving considerable success in turning distressed properties into vibrant living communities and realizing significant investment gains. It was clear that there was an opportunity to connect investors to the many real estate development projects that were available.

It was on the summer patios of Beertown in Waterloo Town Square that the idea for Open Avenue was born. Being a University of Waterloo engineer naturally interested in technology and innovation, it was easy to see the need for an online real estate investment platform that would enable all types of investors to participate in new real estate investment opportunities, bringing real estate investing into the digital age.

Own real estate. No headaches.

Our mission with Open Avenue is to eliminate the roadblocks to investing in real estate. Everyone should have the opportunity to invest in community real estate projects without having to fund entire projects on their own or being willing to plunge toilets, take out garbage or deal with midnight phone calls. And it should be done on a very transparent basis so that each investor feels comfortable and secure in knowing what they're investing in, who they're investing with and how their investment returns are being generated. Open Avenue brings real estate investment into the digital world by providing real-time reports and insight into property income and expenses, valuations and operations.

We're super excited to unveil Open Avenue to the crowd and build our community together.