interactive ontario

June 18, 2014

Via email to: comments@osc.gov.on.ca

The Ontario Securities Commission
Cadillac Fairview Tower
Suite 1903, Box 55
20 Queen Street West
Toronto, Ontario
M5H 3S8
Fax: 416-593-2318

Attn: The Secretary

Re: Interactive Ontario's Public Response to the Ontario Securities Commission's call for public comment to the proposed Crowdfunding Prospectus Exemption

Ladies and Gentlemen:

In connection with the Ontario Securities Commission's (OSC) Exempt Market Review, and 90-day request for comment period for four new capital raising prospectus exemptions in Ontario, we make the following comments with respect to the crowdfunding prospectus exemption (the Crowdfunding Prospectus Exemption) and regulatory requirements applicable to a crowdfunding portal (the Crowdfunding Portal Requirements) as set out below.

On behalf of the Board of Interactive Ontario (IO) and the companies it represents in Ontario's Interactive Digital Media (IDM) sector, we are pleased to submit our written comments to the OSC for consideration. Recognizing that the value of allowing an orderly method of facilitating capital raising for business enterprises, particularly start-ups and small and medium-sized enterprises (SMEs), while protecting the interests of investors is of keen interest to our membership, we make these recommendations based on consultations with our members and other stakeholders.

As a starting point, our key concerns focus primarily on the goal of allowing a new way to raise capital for enterprises, entities and ventures in the digital media and cultural space that previously would have been difficult, if not wholly impossible. We see the proposed Crowdfunding Prospectus Exemption as a step in the right direction to allow companies in the digital media sector to expand, grow and thrive.

<u>Issuer Qualification Criteria:</u>

We support the class of issuer being restricted to non-reporting issuers for the reason that crowdfunding activity is meant to attract new investors and new money to the sector involved. Reporting issuers have another securities regime of which to avail themselves should they choose to do so.

We make no comment on the proposed exclusion of real estate issuers that are not reporting issuers.

We support the restrictions to an issuer's business having a majority of Canadian resident, corporate directors, which comports with the existing regulations under the Income Tax Act, the notion of a Canadian-controlled private corporation or CCPC, and the underlying tax policy which has traditionally provided support to growth in the digital media sector as a cultural sector.

<u>Offering Parameters and Investment Limits:</u>

However, we have some reservations about the limits proposed on the investment amount ($1.5 Million), on the time limit for the offering (90 days), on the single investment amount ($2,500) and on total investment amount per investor per calendar year ($10,000).

If the Crowdfunding Prospectus Exemption is to be successful, and by that we would measure the number of companies and projects funded in the sector by this method, then the history of private investment in the sector must be considered. It has not been plentiful. Indeed, without regulation or Government action investors tend to shy away from investing in what they perceive, often mistakenly, as a high-risk investment, when, say, compared to junior mining stocks.

Without drawing conclusions, it is safe to say that any company with a plan and an unproven track record or management is likely to be assessed on a similar basis of risk to a mining stock for a new entry to the market. It has traditionally been very difficult to raise capital for the sector so much so that imposing a 90-day limit may prove to be too short to allow investors previously unfamiliar with investments in the sector, let alone investments at all, to act.

In a prospectus exemption regime, a business plan is meant to replace the disclosure in a qualified prospectus, however, will there be the discipline involved that an issuer may bring to the process. Where there is a lack of disciplined involvement on the part of the issuer, particularly if it is a private company, SME etc., then it stands to reason that a longer qualifying period may be necessary to give assurances, answer questions and provide information to any serious investor.

We would recommend extending the limit to 180 days for a round of financing to be raised, or at the very least if a minimum amount of financing was achieved 30-40%, that the 90 days be extended for an additional 90 days. This second mechanism however is less desirable given the propensity of public opinion to draw an adverse conclusion to the success of the capital raise from the mere fact of a deadline needing extension.

Similarly, the investment amounts seem arbitrary bearing no relation to the costs of operation of a company (seed financing), or of mounting project in the digital media sector. What benefit is to be gained from a limit of $2,500? Of $10,000? Of $1.5 Million? If these controls are meant to mimic an efficiency or provide monitoring, we do not think this is the place from which to achieve protection of an investor. On simple investment math, the shares would be priced at $25.00 - a low to moderate range stock investment - were that comparison to be made. In reality, the limits provide a kind of benchmarking based on assumptions, perhaps erroneous, which could be potentially damaging to the advent of a new method of capital investment in a sector, previously unknown to the capital markets in Canada.

The average project size in digital media often exceeds the $1.5 Million cap which would mean that digital media would still be reliant on other sources of ‘soft’ money and therefore putting the sector at a disadvantage when compared with resources or biotech sectors which are less reliant on such sources having the ability to raise money in the capital markets.

That said, we appreciate that these thresholds are a starting point for securities based crowdfunding in Ontario, and understand the OSC’s desire to strike a balance.

<u>Additional portal obligations:</u>

As a fraud prevention measure, we support the proposal for conducting background checks 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.

<u>Activity fees:</u>

We support the proposed activity fee of $500 per exemption for the Crowdfunding Prospectus Exemption as reasonable and achievable for the sector. We have concerns about the costs of disclosure, financial monitoring and reporting imposed by the current proposal for any crowdfunding offering. We note that review engagement reports are required where investments are not sizable by the Federal Government cultural investor and suggest that this approach may form a model for the right-sizing of reporting to investing.

Additionally, IO, through its knowledge of the IDM industry and experience managing support programs, would be prepared to advise on or participate in the administration of new initiatives on behalf of the Government, should officials deem this appropriate.

We are available at any time should you wish to explore IO's recommendations in greater detail.

Yours sincerely,

Peter Miller, Chair