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BY EMAIL

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Dear Sirs/Mesdames:

Re: ASC Notice and Request for Comment Proposed Multilateral Instrument 45-108 *Crowdfunding* (the "Proposed MI")

The Canadian Advocacy Council[1] for Canadian CFA Institute[2] Societies (the **CAC**) appreciates the opportunity to provide the following general comments on the Proposed MI.

We support regulatory measures designed to assist the capital raising needs of Canadian issuers while strongly emphasizing investor protection. Investor protection in the exempt market is best enhanced by providing clear risk disclosures, taking steps to verify eligibility to participate in the market, and implementing a best interest standard on all registrants.

We have previously expressed our concerns with respect to the crowdfunding prospectus exemption. Many market participants agree that crowdfunding investment decisions are based mostly on emotions, which could result in a precarious situation for investor protection. Given the small amounts of capital that can be raised, both by issuers and the individual limits placed on investors themselves, we do not think it will be economically feasible for issuers to raise capital based on this exemption if the terms are different in various jurisdictions. We are thus supportive of harmonizing, to the extent possible, the exemption with that adopted by the Ontario Securities Commission, including with respect to the proposed annual investor investment limits.

As harmonization with the existing exemption in other jurisdictions is important, our comments below are intended to reflect concerns we have raised in other jurisdictions with respect to the prospectus exemption and could potentially be considered for future amendments to the MI or for additional guidance, where applicable.

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[1] The CAC represents more than 15,000 Canadian members of the CFA Institute and its 12 Member Societies across Canada. The CAC membership includes portfolio managers, analysts and other investment professionals in Canada who review regulatory, legislative, and standard setting developments affecting investors, investment professionals, and the capital markets in Canada. See the CAC's website at http://www.cfasociety.org/cac. Our Code of Ethics and Standards of Professional Conduct can be found at http://www.cfainstitute.org/ethics/codes/ethics/Pages/index.aspx.

[2] CFA Institute is the global association of investment professionals that sets the standard for professional excellence and credentials. The organization is a champion for ethical behavior in investment markets and a respected source of knowledge in the global financial community. The end goal: to create an environment where investors' interests come first, markets function at their best, and economies grow. CFA Institute has more than 135,000 members in 151 countries and territories, including 128,000 CFA charterholders, and 145 member societies. For more information, visit www.cfainstitute.org.

We continue to be of the view that the exemption should be restricted to non-reporting issuers. If the exemption is intended to address a funding gap for small and medium sized issuers, there should not be a need for those issuers already subject to an expensive continuous disclosure regime to raise money through this exemption. In addition, it could be confusing for people investing in more than one issuer through the portal if issuers have different reporting requirements. They may not understand the difference between the reporting obligations of a reporting issuer and a non-reporting issuer. As an example, if an investor purchases the securities of a reporting issuer through the portal as their first investment, they might come to expect every issuer in which they invest through the portal to have a robust continuous disclosure regime, which would not be the case for the investment they next make in a non-reporting issuer.

We agree that requiring a majority of the issuer's directors be resident in Canada will help the objective of ensuring the initiative is aimed at facilitating capital raising for Canadian issuers. It is important to continue to permit some of the directors to be non-residents to help ensure that each issuer can structure its internal affairs appropriately and encourage participation by the directors best suited for the particular issuer and industry.

We think a limit of $1.5 million could be sufficient for issuers to raise start-up capital while still offering some level of investor protection, however the appropriate limits will be industry specific (for example, technology start-ups are quite capital intensive). More information could be required in order to determine if the limits should vary depending on the industry classification of the issuer. In all circumstances, if the maximum limit is too low, it could set up an issuer for failure before it has even begun operations. If the maximum limit is too high, however, given the proposed $2,500 individual investor limit for non-accredited investors, an offering could result in an unworkable number of small investors, and the costs of communicating with such investors could become untenable.

We do not think that there should be separate investment limits for accredited investors who invest through the portal. Simply being an accredited investor is not in all cases a proxy for investor sophistication. Possessing investable assets above a certain threshold may not imply familiarity with investments, as the threshold could be reached through inheritances and lottery winnings, as examples. Neither an asset test nor an income test is sufficient to determine which investors have better access to information and are sophisticated enough not to require as much protection as others.

The proposed requirements for registered portals and the caps on investment are important safeguards, but additional restrictions could be considered specifically to address concerns relating to investors with low financial literacy and/or minimal investment experience. Timely and effective enforcement will also be key to mitigating the risk of abuse and fraud. Staff of the ASC should monitor, in particular, that the requisite financial reports are provided in a timely fashion and completed as required.

Although issuers could be expected to seek additional financing, many commentators have noted a "Series A crunch", referring to the problems faced by start-ups when attempting to secure the next level of financing once the initial seed capital is obtained[3]. We believe that any difficulty in achieving the next level of financing might make it even more difficult for investors to dispose of their securities due to the expected lack of any secondary market. As a result, we believe investors

[3] Ross S Weinstein, "Crowdfunding in the U.S. and Abroad: What to Expect When You're Expecting" (2013) 46 Cornell Int'l LJ 427.

on the portal (who may not be familiar with the resale requirements in other forms of private placements) should be provided with information regarding to whom these securities can be sold, and a description of the proposed hold periods. In order to help mitigate the risk of fraud, issuers could be required to disclose information with respect to persons with signing authority over the financial accounts of the issuer (if it differs from the principals, directors, etc. for whom disclosure is otherwise required). The founders of the issuer could be required to escrow their existing securities for a period of time, in order to ensure they retain a substantial stake in the issuer. The resulting ownership structure after completion of the capital raising through the exemption should be disclosed. With respect to disclosure requirements, unique obligations may be required in order to provide investors with tangible, relevant information on the issuer without requiring the issuer in the specified cases to provide expensive, audited financial statements. For example, the issuer could be required to post tax returns or assessments (redacted as needed to protect confidential information) as a method of confirming revenue (or the lack thereof).

In addition, the Proposed MI should require notice of the specified significant events in Alberta.

Given the likelihood that investors purchasing securities in reliance on the crowdfunding exemption will not have extensive investment experience, it is very important for portals to have the primary due diligence responsibility relating to the issuers "listed" on the portal, including the responsibility to compete domestic background checks. To the extent any directors, officers, promoters or control persons are non-residents of Canada, international background checks should also be required. Due to the costs and time delays that such checks may entail, it may not be necessary to run international background checks on every resident Canadian.

The portals could be required to assist issuers in providing registrar and transfer agent type functions to help issuers monitor and communicate with their security holders, particularly as it relates to social media communications. When the exemption is utilized by start-up or smaller companies in the growth phase, it is likely that the capital raising sought by the exemption will not be isolated financing, and companies will likely seek additional funds through alternative methods concurrently or shortly thereafter[4] . Investors may not be cognizant of the fact that each additional financing will dilute their investment, and thus the risk warning (or other warning prominently displayed by the portal) should specifically address the risk of dilution due to additional financings, whether through the portal or otherwise. Issuers should be required to notify investors through the portal of any additional financings.

We support the CSA initiative that is underway with respect to potentially imposing a statutory best interest duty on registrants, and strongly support imposing such a duty on registered dealers providing advice to clients, including exempt market dealers providing advice on privately placed securities. Retail investors rely primarily on their advisers to let them know if an investment is appropriate for their level of risk tolerance. Even though it is proposed that investors sign a risk acknowledgement form, investors assume that their advisers are looking out for their best interests. If such a standard were formally implemented, it would help to ensure that an investment in privately placed securities under the exemption is in fact in a client's best interests, which would materially enhance investor protection.

[4] *Ibid*.

Concluding Remarks

We thank you for the opportunity to provide these comments. We would be happy to address any questions you may have or to meet with you to discuss these and related issues in greater detail. We appreciate the time you are taking to consider our points of view. Please feel free to contact us at chair@cfaadvocacy.ca on this or any other issue in future.

(Signed) *Michael Thom*

Michael Thom, CFA
Chair, Canadian Advocacy Council