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Is Crowdfunding Investment Coming to Ontario?

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The passage of the *JOBS Act* in the United States, which includes provisions for crowdfunding investment, has led to suggestions that Ontario should also allow crowdfunding investment under the *Securities Act*. The Ontario Securities Commission (the "OSC"), has taken the first step towards considering a potential crowdfunding exemption as part of its wider review of the exempt market in Ontario. As part of this review, the OSC has set out a crowdfunding exemption concept (the "model exemption"). This concept will undoubtedly undergo further change as a result of investor feed back and the OSC may in the end decide not to introduce a crowdfunding exemption at all. Nevertheless, the model exemption gives a good idea of the key elements the OSC would like to see in a crowdfunding investment exemption, if it is ever introduced. These elements include:

The Issuer - The issuer must be a company incorporated in a Canadian jurisdiction. The model exemption would not be available for investment funds.

The Security - Only four relatively simple classes of securities (such as common shares or securities convertible into common shares) could be distributed under the model exemption.

Distribution - The model exemption would only apply to distributions by an issuer in securities of its own issue.

Size of Investment - A purchaser's investment in securities of a particular issuer would be limited to $2,500. In addition, a purchaser's total investment under the model exemption in a calendar year could not exceed $10,000.

Size of Offering - An issuer could not raise more than $1,500,000 in a 12 month period under the model exemption.

Distribution Disclosure - A purchaser must be provided with an information statement at the time of distribution. The information statement would contain "financing facts", "issuer facts" and "registrant facts." The model exemption would specify that the information statement falls within the OSC definition of an offering memorandum and therefore gives the purchaser certain rights under Section 130.1 of the *Securities Act.*

Ongoing Disclosure - The issuer must provide its security holders with annual financial information within 120 days from its fiscal year end. The issuer must maintain books and records that are available for inspection by both purchasers and OSC staff.

Risk Acknowledgement - A purchaser must sign a stand alone risk acknowledgement form in respect of the purchase.

Registrant Involvement - Distributions would have to be made through a registered funding portal. The portal must be registered in an existing dealer or adviser category and would play a "gatekeeper role" in obtaining regulatory background checks on the issuer and its principals.

Withdrawal Right - The model exemption would give purchasers the right to withdraw within two business days of the distribution.

Reporting Requirements - A distribution under the model exemption would trigger a requirement to file a report of exempt distribution. The filing fee for non reporting issuers is $500 (plus HST) at the time of writing.

Resale Restrictions - Securities distributed under the model exemption would be subject to a restricted sales period. This period would be indefinite where the issuer is not a reporting issuer.

So, the answer to the question in the headline is "maybe". If it does, the OSC exemption will probably embody most of the above elements. But, any such exemption will be some time in arriving. If you are interested in raising funds through crowdfunding, you will have to stay tuned. If you have any questions, please feel free to contact me at the coordinates below.

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