December 7, 2000

Mr. John Stevenson,
Secretary
Ontario Securities Commission
20 Queen Street West
Suite 1900, Box 55
Toronto, Ontario M5H 3S8

Dear Mr. Stevenson,

Thank you for the opportunity to comment on Proposed OSC Rule 45-501 - Exempt Distributions. I will confine my comments to two issues raised by the proposed rule; (i) the threshold assets test required of a qualified individual under the Aaccredited investor@ definition in section 1.1 of the proposed Rule and (ii) the operation of the proposed Afamily member@ exemption in section 2.4.

(i) The aspect of the proposed Aqualified individual accredited investor@ definition that I wish to comment on is the extension of the definition to individuals who alone or *jointly with a spouse* beneficially own financial assets Ahaving an aggregate net realizable value exceeding $1.0 million@. I understand that the ability of an individual to qualify as an accredited investor if he or she owns, jointly with his or her spouse, the appropriate amount of financial assets, derives from the current reality that such assets will, in certain situations, be considered family property. But it may well be that the recognition of this reality raises the further question of whether it should be a requirement that the spouse **consent** to, or at least signal his or her awareness of, the use of such assets to qualify for this exemption under Ontario securities law.

The Commission will be aware that courts, in Canada and elsewhere, are increasingly willing to scrutinize the circumstances surrounding the consent of spouses to mortgages or loans secured by the family home. It is true that this proposed rule has been drafted so as to exclude the family home from the calculation of the assets available to make use of the exemption. It is also true that the fact that an individual investor **owns** financial assets of a value greater than $1.0 million does not necessarily mean that that amount of assets is being invested in any particular exempt transaction, though it could be. But the question remains whether, if assets (such as those invested in RRSPs) that are in fact family assets are being used to qualify an investor as an exempt purchaser of securities, should the spouse who may have a claim on those assets be somehow involved in the process of qualifying as such an investor? This could occur by way of, for example, providing a simple declaration of consent. I would submit that some further thought should be given to how this exempt status interacts with principles of family law. The issue for securities regulators, ultimately, is whether investment decision-making by an accredited investor is qualitatively different from non-exempt investment decision-making where an inquiry into spousal involvement or consent would not, of course, be made.

(ii) The proposed Rule introduces a new Afamily member@ exemption permitting issuers to issue securities on an exempt basis to Aspouses, parents, grandparents or children of its officers,

directors and promoters@. The use of this proposed exemption does not appear to be limited to new issuers, though it is somewhat analogous to aspects of the former seed capital exemption and possibly the former private company exemption. Because of its now potentially wider application, I submit that more attention needs to be paid to whether the regulatory protections surrounding its use are adequate. The core issue is the possibility of investor vulnerability, in the sense that it is not clear that fewer regulatory protections are needed for this class of potentially unsophisticated investor because they are personally related to the principals of the issuer. It is surely possible that the family relationships involved mean that investment decision-making will be influenced by considerations other than those usually employed in arms-length investing. As with the issue of jointly-held spousal assets being used to qualify as an accredited investor, again the question is how far securities regulation should insert itself into family-based investment decision-making[1].

I would argue that there is a strong case to be made that the issues covered in the proposed information statement (Form 45-501F3), currently proposed for use only in connection with the closely-held issuer exemption, are of at least equal if not greater importance to family members of an issuer=s principals, who are being solicited to invest in an issuer on an exempt basis. Extending the provision of a suitably-adapted Form 45-501F3 to the class of investors qualified to use the Afamily member@ exemption might afford them the opportunity to reflect on the proposed investment in a manner that is less onerous for the issuer than, say, the provision of an offering memorandum. On the other hand, of course, an offering memorandum would provide issuer-specific information. However, given that there may be only a small number of investors making use of this specific exemption, the cost of preparing an offering memorandum may not be justified unless it is being contemporaneously prepared for another exemption, such as the closely-held issuer exemption. Thus the provision of a generic information statement may be an appropriate compromise in this context.

I would be happy to elaborate on these brief comments, if it would be helpful. Thank you for your attention to this submission.

Yours sincerely,

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[1] Of course, courts are often required to do this in the context of oppression actions brought following the breakdown of family business relationships