

BY COURIER

December 7, 2000

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

Dear Mr. Stevenson

Ontario Securities Commission Rule 45-501 and Companion Policy 45-501CP (Exempt Distributions)

This letter is submitted in response to the request for comment dated September 8, 2000 in respect of the Proposed OSC Rule 45-501 (the "Proposed Rule") and Companion Policy 45-501CP (Exempt Distributions) (the "Proposed Policy"). This submission is provided to you by the Securities Subcommittee by the Business Law section of the Canadian Bar Association (Ontario) (the "Subcommittee"). Please note that while this submission reflects the views of the Subcommittee, it has not been approved by the Canadian Bar Association (Ontario) (the "CBA-O"). We will be pleased to notify you once CBA-O approval has been obtained.

Attached for your information is Appendix A of the list of the members of the Subcommittee.

As requested, this letter is submitted, in duplicate, and a diskette containing a copy of the letter in "Word" format is included.

When the Subcommittee commented on the concept paper issued by the Ontario Securities Commission ("OSC") dated May 10, 1999 (the "Concept Paper"), we indicated our support of the OSC's initiative in this matter. That support certainly continues.

The Subcommittee offers the following comments on the Proposed Rule:

1. Net worth threshold for determining accredited investor status – Section 1.1 definition of "accredited investor"

In our previous comments with respect to the Concept Paper, we noted that the \$2.5 million threshold was too high with the result that it would significantly limit the number of persons available to access this exemption and, therefore, defeat, in part, its purpose. Although the threshold has been lowered to \$1 million (which we suggested in our previous comments), by only including "financial assets", this reduction of the threshold may not be effective. Staff states in the reasons attached to the request that *"upon reconsideration, the Commission did not consider it appropriate to include assets in the net worth calculation that the investor cannot afford to lose. An example of such an asset may be an individual's principal residence"*.

While we agree with the reasoning above and especially with the example, the definition of “financial assets” appears to go much further. If, indeed, the reasoning for defining “financial assets” in the manner proposed is based on the reasoning quoted above, then we see no reason why other assets would not be included such as precious metals, mortgages and real estate (other than the principal residence) since an investor could “afford to lose” such assets.

2. Companion Policy 45-501CP – Section 2.1

We note that the Policy provides that a seller of securities cannot rely on the exemptions in Sections 2.1 and 2.4 if the seller is paying or incurring selling or promotional expenses in connection with the distribution. Sections 2.1 and 2.4 of the Proposed Rule refer to the specific trade while the definition of “closely-held issuer” only restricts that exemption where an issuer’s securities have been offered or sold by advertisement. Staff’s comments with respect to the prohibition on advertisement are set out in the Request for Comments and we agree with them. There are no reasons provided to limit the concurrent use of both the closely-held issuer exemption and accredited investor exemption when selling expenses are incurred only with respect to the accredited investor trades. Indeed, the wording in Sections 2.1 and 2.4 do not appear to support such a restriction.

We would suggest allowing the concurrent use of the two exemptions except in cases where the securities have been sold by advertising or other promotional expenses. This would allow an issuer to attract accredited investors by way of an intermediary while at the same time relying on the closely-held issuer exemption. Cautionary language should be included so that none of the selling expenses may be incurred in connection with the trades made in reliance on the closely-held issuer exemption.

The Subcommittee is pleased to have had this opportunity to comment on the draft Proposed Rule and Companion Policy. If you have any questions or comments regarding this letter, please feel free to contact Timothy McCunn (613-787-3532) or Richard Lococo (416-926-6620).

Yours truly

**Securities Commission
Business Law Section
Canadian Bar Association (Ontario)**

Per: (signed) “Timothy J. McCunn”
Timothy J. McCunn

Appendix “A”

List of Members of CBAO Securities Subcommittee

Richard A. Lococo (Chair), *Manulife Financial*
Mary Condon, *Osgoode Hall Law School*
Anoop Dogra, *Blake, Cassels & Graydon LLP*
Eleanor K. Farrell (Secretary), *Osler, Hoskin & Harcourt LLP*
W. Paul Fitzgerald, *Heenan Blaikie*
Allan Goodman, *Goodman, Phillips & Vineberg*
Carol Hansell, *Davies, Ward & Beck*
Henry A. Harris, *Gowling, Strathy & Henderson*
Mary Ross Hendriks, *Canadian Securities Institute*
Krista F. Hill, *Torys*
Todd M. May, *Smith Lyons*
Timothy J. McCunn, *Borden Ladner Gervais LLP (Ottawa)*
Jennifer J. Northcote, *Stikeman, Elliott*
Andrew Parker, *McCarthy Tétrault*
Victor R. Peter, *Ogilvy Renault*
Robert J. Richardson, *CIBC World Markets*
Nancy J. Ross, *Association for Investment Management and Research*
Robert N. Spiegel/Richard J. Steinberg, *Fasken Martineau DuMoulin LLP*
Philippe Tardif, *Lang Michener*
Francis J. Turner, *Osler, Hoskin & Harcourt LLP*
Arlene D. Wolfe, *McLean & Kerr LLP*

Liaison:

Timothy S. Baikie, *The Toronto Stock Exchange*
Patrick Ballantyne, *The Toronto Stock Exchange*
Iva Vranic, *Ontario Securities Commission*