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BY COURIER

May 7, 2001
File No.: 0060000070

Mr. John Stevenson
Secretary to the Commission
Ontario Securities Commission
20 Queen Street West
Suite 1903, Box 55
Toronto, Ontario M5H 3S8

Dear Mr. Stevenson:

Re: Proposed Rule 45-501 - Exempt Distributions and Companion Policy 45-501 CP

This letter sets forth my personal comments and personal comments that my partner, Simon Romano, has asked me to include with respect to the Proposed Rule 45-501 – Exempt Distributions (the "Proposed Rule") and Companion Policy 45-501 CP. The comments are not those of the firm. A Word 97 diskette containing the contents of this letter is enclosed.

General Comments

1. As Mr. Romano commented in his letter of October 18, 2000 concerning an earlier version of the Proposed Rule, the existing private company and $150,000 exemption should be retained notwithstanding the implementation of the closely-held issuer and accredited investor exemptions in the Proposed Rule.

   The rationale for retaining these exemptions was noted in Mr. Romano's October 18, 2000 letter and, while some issues have been addressed in the Proposed Rule or notice thereof, the rationale remains largely the same. In summary, the exemptions have historically worked well and are consistent with the approach in other Canadian jurisdictions, which consistency is highly desirable for issuers dealing in the national and international capital markets. The private company exemption is much clearer than the proposed closely-held exemption, and is relied upon by many issuers and their legal

and other advisers who are not sophisticated in matters of securities law. The costs of removing this exemption clearly outweigh the benefits, in our view.

The $150,000 exemption has been a useful blackline test and, it is submitted, as reasonable a proxy for investor sophistication as other criteria set out in the Proposed Rule. In addition, there are start-up situations where an entity may not qualify under paragraph (t) of the definition of "accredited investor" but would have the investor sophistication to invest in securities without a prospectus. A clear example is a new private equity fund that would typically not be capitalized until the time when the investment is made, thus making it unlikely to be able to meet the criteria to rely on paragraph (t). Contrary to the statements in the request for comments, many reasonably sized (i.e. $25 million plus) private equity funds would not have an initial asset base of at least $5 million. It is not, I would suggest, a desirable approach, in the context of sophisticated and efficient capital markets, for the Proposed Rule to force an entity to make capital calls in advance to levels that it would not rationally choose to do in order to enable it to rely on paragraph (t).

Comments on Definition of Accredited Investor

2. The reference in paragraph (a) of the definition of "accredited investor" should be to "an authorized foreign bank", as that is what is listed in Schedule III of the *Bank Act* rather than "an authorized foreign bank branch".

3. Paragraph (p) of the definition of "accredited investor" should be expanded to refer to officers or directors of affiliated entities of the issuer.

4. Paragraph (t) of the definition of "accredited investor" includes limited partnerships and limited liability partnerships. It should also include general partnerships.

   There would seem no policy reason to distinguish among these three different types of partnerships. All three should be included, subject to the applicable net asset test. A limited liability partnership under the *Partnerships Act* (Ontario) is restricted in its business to "the carrying on of a profession under an Act". Not all partnerships carrying on such a profession are LLPs, including our own.

5. With respect to paragraph (x) of the definition of "accredited investor", there is no apparent "investor sophistication" rationale for distinguishing between securities of mutual funds and non-redeemable investment funds ("fund securities") and securities of other issuers when purchased by a managed account. The exclusion of fund securities should be dropped from the paragraph. I note the comment in the notice regarding the Proposed Rule that the Commission is considering this matter as a separate project.

However, funds should not be required to await whatever time this may take, in my view.

6. With respect to paragraph (aa) of the definition of "accredited investor", it should be clarified that the reference to "interests", which is not a defined term, does not include debt securities. In addition, it is not at all clear how this could work in a multi-jurisdictional manner, so at most it should be limited to persons in Ontario.

7. Paragraph (z) should be expanded to refer also to investors regulated, etc. elsewhere of the type referred to in paragraphs (k), (l), (x) and (y).

Comments on Definition of Closely-Held Issuer

8. The carve out in the definition of "closely-held" issuer should not refer to a non-redeemable investment fund.

The inclusion of non-redeemable investment funds in the carve out is a change to the "private issuer" exemption in the existing OSC Rule 45-501 and there is no apparent policy reason for it nor, I would suggest, for the carve out generally.

Comment re Exempt Trade Reports

9. The carve out in section 7.5(1), as to the trades where no report is required, should be expanded so that no report or fee is required for trades with accredited investors pursuant to paragraph (aa) of the definition where the applicable accredited investors owning the entity in paragraph (aa) are those referred to in paragraphs (p) through (s).

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I trust these comments are helpful.

Yours very truly,

Kathleen G. Ward

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cc: Simon A. Romano, *Stikeman Elliott*