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Sent Via Email

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Re: CSA Staff Consultation Note 45-401 – Review of Minimum Amount and Accredited Investor Exemption

Attention: British Columbia Securities Commission
Alberta Securities Commission
Saskatchewan Financial Services Commission
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
New Brunswick Securities Commission
Superintendent of Securities, Prince Edward Island
Nova Scotia Securities Commission
Securities Commission of Newfoundland and Labrador
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Yukon Territory
Superintendent of Securities, Nunavut

We are writing in response to your request for comment regarding the \$150,000 minimum amount prospectus exemption (minimum amount exemption) and the accredited investor prospectus exemption (AI exemption) contained in National Instrument 45-106 Prospectus and Registration Exemptions (NI 45-106). The following are our responses to your consultation questions:

- 1. What is the appropriate basis for the minimum amount exemption and the AI exemption? For example, should these exemptions be premised on an investor's:**
 - financial resources (ability to withstand financial loss or obtain expert advice),**

- access to financial and other key information about the issuer,
- educational background,
- work experience,
- investment experience, or
- other criteria?

Please explain.

It is our opinion that the minimum amount exemption and the AI exemption should be based on an individual's financial resources and/or investment knowledge (i.e. registered as a financial advisor, fund manager, etc.). Simplifying the criteria for these specific prospectus exemptions removes the risk to interpretation when determining who qualifies for participation in a private placement (as is the case with current criteria).

2. Does the involvement in the distribution of a registrant who has an obligation to recommend only suitable investments to the purchaser address any concerns?

Yes. Purchases by an investor directly through a registered dealer (i.e. an IIROC Member firm) should qualify as an exemption since the registered dealer has a responsibility to know the product and their client to ensure suitability of investment.

3. Do you have comments on the issues described above?

No.

4. Are there other issues you may have with the minimum amount exemption?

Yes. It is our opinion that the minimum amount exemption should be eliminated altogether. Currently, it is possible under that exemption for an individual who does not qualify for any other prospectus exemption to invest their entire life savings (i.e. \$150,000) and risk being financially destroyed.

5. Do you agree with maintaining the minimum amount exemption in its current form?

No. Please see above.

6. How much should the minimum investment threshold be increased? Would your answer to this question change depending on whether:

- any disclosure is provided to investors, including risk factor disclosure?
- the purchaser is an individual, instead of an institutional investor?
- the security is novel or complex?
- the issuer of the security is a reporting issuer?
- a registrant is involved in the distribution who has an obligation to recommend only suitable investments to the purchaser?

It is our opinion that there is no suitable minimum dollar amount. Please see our response to question #4.

7. Should the \$150,000 threshold be periodically indexed to inflation?

No.

8. If we changed the \$150,000 threshold what would the impact be on capital raising?

It is our opinion that the elimination of the \$150,000 threshold exemption would have little to no impact on capital raising initiatives. As practitioners in the financial industry, we have successfully raised capital through private placements for more than 100 issuers using only the accredited investor exemption.

9. Should individuals be able to acquire securities under the minimum amount exemption? Would your answer to this question change depending on whether:

- any disclosure is provided to investors, including risk factor disclosure?
- the security is novel or complex?
- the issuer of the security is a reporting issuer?
- a registrant is involved in the distribution who has an obligation to recommend only suitable investments to the purchaser?

No. Please see our response to question #4 above.

10. If individuals are able to acquire securities under the minimum amount exemption, should there be any limitations?

Please see our response to question #4 above.

11. If we limited the use of the exemption to persons who are not individuals, what would the impact be on capital raising?

It is our opinion that such a change would have little to no impact on capital raising initiatives.

12. Are there alternative qualification criteria for the minimum amount exemption?

No.

13. Are there other limitations that should be imposed on the use of the minimum amount exemption?

No. Please see our response to question #4 above.

14. Should the minimum amount exemption be repealed? Would your answer to this question change depending on whether:

- any disclosure is provided to investors, including risk factor disclosure?
- the purchaser is an individual, instead of an institutional investor?
- the security is novel or complex?
- the issuer of the security is a reporting issuer?

- a registrant is involved in the distribution who has an obligation to recommend only suitable investments to the purchaser?

Yes. Please see our response to question #4 above.

15. If the minimum amount exemption was repealed:

- would that materially affect issuers' ability to raise capital?
- is the AI exemption (in its current or modified form) an adequate alternative to the minimum amount exemption?

No. Please see our response to question #8 above. It is our opinion that the AI exemption would be an adequate alternative to the minimum amount exemption.

16. Are there other options for modifying the minimum amount exemption that we should consider?

No.

17. Do you have comments on the issues described above?

No.

18. Are there any other issues you may have with the AI exemption?

We are of the opinion that the current definition of the AI exemption should be simplified. For example, the criteria of having \$5 million in fixed assets should be eliminated because in theory, an investor who has that much in fixed assets may not have much in liquid assets. A failed investment may create financial stress for an individual who in turn may be forced to liquidate their only fixed assets (i.e. their house which in today's market could easily be worth \$5 million). For individual investors, the AI exemption should be determined by liquid assets or net income or a combination of both.

19. Do you agree with retaining the AI exemption and the definition of "accredited investor" in their current form?

No. Please see our response to question #18 above.

20. What should the income and asset thresholds be? Would your answer to this question change depending on whether:

- any disclosure is provided to investors, including risk factor disclosure?
- the security is novel or complex?
- the issuer of the security is a reporting issuer?
- a registrant is involved in the distribution who has an obligation to recommend only suitable investments to the purchaser?

Please see our response to question #18 above. We are of the opinion that the income thresholds should be increased regardless of the complexity of the investment or risk disclosure provided to the investor.

As previously mentioned, it is our opinion that a prospectus exempt financing conducted through an IIROC Member Firm should qualify as a stand-alone prospectus exemption.

21. Should the income and asset thresholds be periodically indexed to inflation?

Yes.

22. If we changed the income and asset thresholds, what would the impact be on capital raising?

It is our opinion that changes to the income and asset thresholds would impact capital raising initiatives by reducing the pool of eligible investors (this assumes that the changes are to increase income and asset thresholds). However, by making the changes suggested by our responses noted above, the diminished pool of eligible investors that want to purchase directly with the issuer (i.e. a NBPP) and not through an IIROC Member Firm would be offset by the larger number of those investors forced to purchase through a financial advisor in order to qualify.

23. What qualification criteria should be used in the AI exemption for individual investors? Would your answer to this question change depending on whether:

- any disclosure is provided to investors, including risk factor disclosure?
- the security is novel or complex?
- the issuer of the security is a reporting issuer?
- a registrant is involved in the distribution who has an obligation to recommend only suitable investments to the purchaser?

Please see our response to question #18 above.

24. If we changed the qualification criteria, what would the impact be on capital raising?

Please see our response to question #22 above.

25. Should individuals be able to acquire securities under the AI exemption? Would your answer to this question change depending on whether:

- any disclosure is provided to investors, including risk factor disclosure?
- the security is novel or complex?
- the issuer of the security is a reporting issuer?
- a registrant is involved in the distribution who has an obligation to recommend only suitable investments to the purchaser?

Yes. Please see our response to question #18 above.

- 26. Should an investment limit be imposed on accredited investors who are individuals? If a limit is appropriate, what should the limit be? Would your answer to these questions change depending on whether:**
- any disclosure is provided to investors, including risk factor disclosure?
 - the security is novel or complex?
 - the issuer of the security is a reporting issuer?
 - a registrant is involved in the distribution who has an obligation to recommend only suitable investments to the purchaser?

Yes, limits should be imposed on individual accredited investors since the main objective of implementing prospectus exemption criteria is to protect the average investor. We believe no single individual investment should exceed the greater of 50% of their total financial assets and 20% of net income.

- 27. If investment limitations for individuals were imposed, what would the impact be on capital raising?**

We believe such restrictions would reduce the pool of capital available to issuers seeking prospectus exempt financing.

- 28. Should this be considered in a review of the AI exemption?**

With regards to the certification by an independent third party of an individual's AI exemption qualifications, we believe this is not necessary as the onus of responsibility to accurately convey an individual's qualifications should lie with the individual investor. If an individual investor knowingly misstates their qualifications in order to meet AI exemption criteria, then that individual automatically waives their right for recourse should their investment fail due to a material misstatement by an issuer or promoter.

- 29. Do you agree with imposing such a requirement?**

No.

- 30. Are there alternatives that we should consider?**

No.

- 31. Are there other options we should consider for revising the AI exemption or for substituting an alternative exemption?**

Yes, it is our opinion that whenever the AI exemption is utilized, the investor would be required to complete a minimum standard disclosure subscription agreement (i.e. acknowledgement that the investor has waived their right for recourse if they knowingly provided inaccurate information in the subscription agreement, investment threshold acknowledgement, exemption criteria, etc.).

To summarize the responses to the above questions, we are of the opinion the following prospectus exemption changes be implemented:

1. eliminating the \$150,000 minimum investment exemption in its entirety;
2. modifying the AI exemption by eliminating the fixed assets threshold requirements;
3. modifying the AI exemption by increasing the liquid assets and net income requirements;
and
4. eliminating an investor's right for recourse if they knowingly misrepresented their exemption eligibility at the time of investment.

We look forward to discussing with you further our above comments and responses. Please contact us should you have any questions.

Regards,

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