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February 2, 2012

Canadian Securities Administrators
British Columbia Securities Commission
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Vancouver, BC V7Y 1L2

Canadian Securities Administrators
Autorité des marchés financiers
800, square Victoria, 22^e étage
C.P. 246, Tour de la Bourse
Montréal, PQ H4Z 1G3

Attention: Gordon Smith

Attention: M^e Anne-Marie Beaudoin

Dear Sir/Madam:

Re: Review of Minimum Amount and Accredited Investor Exemptions - comments

This response to the Notice of November 10, 2011, is from William H. Smith Professional Corporation and William H. Smith, Q.C. Mr. Smith has practised corporate and securities law in Calgary since 1979, during which time he practised with McCarthy Tétrault from 1986 until 2010. Since August 2010, Mr. Smith has continued his practise as William H. Smith Professional Corporation engaged in corporate and securities matters on a daily basis. Mr. Smith advises growth oriented and start up companies as well as investors (Angel, Venture and Institutional) and corporate finance professionals and firms. In addition, Mr. Smith served as interim Chief of Securities Administration (equivalent to Executive Director) of the Alberta Securities Commission for 6 months in 1990 and as Chair of the Alberta Securities Advisory Committee from its inception for 10 years. Mr. Smith has also been involved in a number of not for profit organizations.

The comments in this submission are solely those of Mr. Smith and are not made on behalf of, or at the request of, any current or past clients or associates.

1. Background to the Review - Under the heading "Reason for Review" there is reference to the global financial crisis and recent international regulatory developments which allegedly have raised questions about the use of the minimum amount exemption and the AI exemption. "Stakeholders" are left to speculate as to the harm done to the global financial system by the minimum amount exemption and the AI exemption. Based on extensive reading of books and articles on the causes and impacts of the global financial crises (including the US Senate Committee Report), there has been not one single suggestion that the crisis was caused by or in any way influenced by access to the exempt market through exemptions such as the ones under review or otherwise.

The CSA has chosen not to share any data which it might have – so again Stakeholders are left to speculate as to whether there was any significant direct loss occasioned by the global

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financial crises by investors who relied on these exemptions. Similarly there is no data provided on abuse or harm – or enforcement activities – arising from these exemptions. Even if there is data which suggests that the exemptions are being abused, there is no evidence that changing or eliminating these exemptions would lessen the abuse. While there are plenty of reported breaches of securities laws, it appears typically that the fundamental issue is that of theft, fraud or misrepresentation, none of which will likely change if the exemption levels were changed or eliminated.

In summary, the request for comments is flawed as it is based on inappropriate assumptions and does not contain sufficient (or any) data to justify the review in the first place.

2. Framework for the Review - The regulatory mandate (protection of the public from unfair, improper and fraudulent practises and fostering fair and efficient capital markets) must be carefully considered in light of the global financial crisis. Giving consideration to increasing regulatory burdens at the level of the two exemptions under review is an inadequate and inappropriate response to the causes or outcomes of the global financial crisis and resulting economic downturn/recession. While individuals have collectively lost hundreds of millions of dollars as a result of unfair, improper or fraudulent practices, there is no evidence that a single dollar would have been preserved if these exemptions had been modified or did not exist.

There was widespread regulatory failure leading up to the global financial crises but the failure related to rating agencies; excessive leverage and outright fraud, not these exemptions. The regulatory response to the real issues to date appears to be insipid.

The two guiding principles identified (addressing risks to investors and markets and proportionate costs to industry by the burdens imposed) ought to be deeply examined. The genesis of securities regulation dates back to the mid-1930s as a consequence of a stock market crash and the Great Depression and seems fundamentally unchanged since then. However, North American society, education levels, and financial opportunities available have changed radically in the intervening 80 years. Again, there is no data presented that the CSA has considered the costs, burdens, benefits or levels of protection in the proposals in any measurable way. Contrariwise, the CSA appears to be soliciting anecdotal views on a broad basis.

3. Principles underlying the minimum amount exemption and the AI exemption - The fundamental principle of securities regulation has been that it is illegal to issue or sell securities unless an issuer provides full, true and plain disclosure of the investment's attributes to the investor and an investor in the secondary market must execute trades through

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an educated and regulated person or entity who has regard to the suitability of that investment for that individual. Because the legal, accounting and ancillary costs (including time) present an undue burden on some organizations in obtaining access to needed capital, the rules allow for a certain number of transactions to be exempted from the costly process of disclosure by prospectus and trading through a registered dealer. Looking at it another way, the "good" of less expensive capital formation outweighed the "harm" of some risks to the investor.

In the specific instance, it was felt that investors with an appropriate financial standing could protect themselves or could, if things went wrong, sustain the loss. It may be difficult to establish a rationale for that, but it certainly seems to be common sense and appropriate. This is particularly the case when one examines other financial areas – for example there is no regulatory interface when an individual or family makes a determination to purchase a home (which we are told is generally the largest single investment made by most people). Of course, there are inherent private restrictions particularly in the form of rules promulgated by mortgage lenders - but if a purchaser did not need to access a formal mortgage, then the purchaser would be free without regulatory interface to take the risk of an investment in the home. The same holds true for a great number of other financial transactions – University or other higher education, automobiles, vacations, etc.

Certainly the costs of prospectus level disclosure have not gone away, so the original rationale for the exemptions appears to continue to apply. For these same reasons, there would appear to be no need to add any additional criteria to these exemptions although the CSA ought to look into introducing additional exemptions from the prospectus and registration requirements based upon investment experience or education or work experience – so as to make a number of new exemptions available for sophisticated, trained or experienced investors.

4. Minimum Investment - In order to gauge the minimum investment level, the CSA needs to undertake a review of the cost/benefit parameters. Small business appears to be the riskiest investment area (by number of failures, but clearly not by dollar volume of losses) but it is also the largest employer and generally seen as the primary driver of the economy of Canada. (Federation of Independent Businesses in Canada website) The test for determining the criteria for the minimum exemption level is not that of purchasing power parity. Rather, the questions are, is the amount sufficiently large to cause a potential investor to have serious thought about making the investment and assuring that sufficient information and understating of the investment are present. Obviously this level is different for each person depending upon their risk tolerance and financial health, but anecdotally, in 30 years of securities law practise and hundreds of private placements, there have been very few people who have not had serious consideration of an investment of \$150,000.

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The really important question is at what level of investment does the exemption unduly restrict the access to capital so vitally needed? If this question is examined objectively in the current economy, a lower level (maybe to \$50,000) will allow more capital formation and lower the individual investor's cost of loss. Comparisons with other countries are simply specious. Each country (and many regions) has unique attributes of economic need, cultural savings/investing patterns, appetites for risk etc. This needs a made in Canada solution, not one from the UK, Australia or the US.

Adding additional hurdles for this exemption such as more risk factor disclosure, intervention of a registrant or limiting to a reporting issuer will simply increase the cost to the issuer with no perceptible advantage to the investor.

5. AI Exemption - The accredited investor exemption is one of the most frequently used exemptions. All of the points made above apply equally to the AI exemption. However, the AI Exemption has the advantage over the minimum amount as the investor can determine the level of exposure or financial risk; it is not set at an arbitrary high number.
6. The current thresholds are adequate as they allow a reasonably broad number of investors to qualify. - Is there any data which suggests that the risk of loss to an investor is higher in reliance on this exemption than in a prospectus offering? Regarding alternative qualifications, again, separate and new exemptions including work experience, financial experience or education will be appropriate – to add to the exemptions not to replace this one. There is no need to lower the financial levels for this exemption – but raising them will simply reduce the amount of capital formation without adding anything to investor protection.
7. Not for Profit and Community Based Financing - Securities regulation limits economic activity. In North America, due to large financial failures costing investors billions of dollars and causing millions of people to be out of work or underemployed, a required solution is to enhance capital formation, to allow small business to raise needed capital and allow the business to deploy the capital not spend it on regulatory compliance and burdens.

Current economic analysis and trends in Canada and the regions, show that there is a small but growing movement towards community capital formation, small local and sustainable businesses which provide meaningful employment and valuable goods and services. (<http://www.livingeconomies.org/>, <http://www.reapcalgary.com/>). The concept of "social capital" is emerging where investors are looking for more limited financial rewards combined with work done to solve social and environmental challenges. ("Money for Good" - <http://thrivecalgary.org/wp-content/uploads/2011/12/SF-Summary-Report.pdf>; <http://thrivecalgary.org/>). In the United States, there are significant tax and regulatory

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initiatives to enhance community capital and social capital formation. (<http://www.livingeconomies.org/>). In Canada, nothing.

The CSA needs to take this opportunity to develop a series of exemptions aimed at the formation of community capital initiatives – for profit, not for profit and for limited profit – over and above the current exemptions under review.

8. Summary - It would have been preferable that the CSA provide fact based materials with some level of analysis on the projected positive and negative impacts of various proposals. The second great contraction was not caused nor impacted by these exemptions and there is no evidence that the absence or modification of these exemptions would have prevented any loss by investors. In the absence of any facts suggesting harm caused by the existing exemptions, they ought to be reviewed, if at all, with a view to enhancing, not lessening, the formation of capital. New exemptions based on investor attributes and also on community capital formation ought to be implemented. Urgently.

Yours very truly,

WILLIAM H. SMITH PROFESSIONAL CORPORATION

signed "*Bill Smith*"

William H. Smith, Q.C.

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