February 26, 2012

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

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Me Anne-Marie Beaudoin
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Cc Western Exempt Market Association E: comments@wemaonline.ca
Hon. Jim Flaherty, Minister of Finance E: jflaherty@fin.gc.ca

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

Dear Sirs and Madams:

Prestigious Properties Group is a product issuer that raises money to buy commercial real estate, primarily apartment buildings but also land parcels or commercial buildings. The writer of this document, Thomas Beyer is the founder and current president of the group. We pride ourselves in building win/win investor solutions by taking low fees & commissions upfront, and an equity only stake after investors have received their capital back. Our current minimum investment is $25,000. Most of our money is raised through the Offering Memorandum (OM) exemption, although we do raise some money through other exemptions such as from accredited investors (AI) or Minimum Amount (MA).

The AI exemption is frequently abused by issuers, in that little to no financial information or assumptions about the future is divulged. Many investors, AIs included, in return do not ask enough probing financial questions about issuers or the past recommendation history of sales people, or find it impossible to research it as no such sufficient disclosure is required today.

→ Private Equity based investment options, uncorrelated to the publicly traded stock market, should be increased, not decreased.

A new balance has to be struck, balancing needs of sales people, issuers and investors.

Therefore it is wrong to ask “should we increase minimums or investors’ net worth requirements”. The right question to ask is “what is reasonable disclosure by sales people and issuers in addition to disclosure requirements today ?”. One such lack of disclosure for issuers is a) past operating performance as well as b) assumptions about the future as any investment is a bet on future events to happen. Therefore it is critical for the issuer to disclose what they believe the future assumptions are.

For sales people past recommendation history should be disclosed as too many sales people hop from poor investment recommendation to the next without any disclosure requirements.

Specific consultation questions

1. What is the appropriate basis for the minimum amount (MA) exemption and the Accredited Investor (AI) exemption?

Today any person can buy lottery tickets for thousands of dollars, or walk into a casino and gamble away $50,000 or $100,000 in one evening. Investors also can invest their entire networth in penny stocks in an online brokerage account, and double it or lose it all. No restrictions to my knowledge exist today in those spaces. Responsible adults should be allowed to make their own life choices, based on as much facts as possible. People know that penny stocks are risky, yet they buy them. People know, that on average buying lottery tickets or gambling in a casino loses them money, yet they do it anyway.

With this in mind, three changes should be introduced to the MA and AI rules governing exempt securities today;

1) The current $150,000 minimum should be LOWERED to $75,000. Anyone who invests $75,000, be it a car, a new boat, a major home renovation or an investment is expected to do some exhaustive research. The investor has to do his/her own research and should not rely only on an “advisors” (really: commissioned sales person) to give (biased) “advice”. Investors, not the security commission, need to be enabled to make their own decisions, based on better disclosure by issuers and sales people.

2) The current AI rule should be modified fourfold:

    a. The minimum networth should be lowered by 50%, from $1M to $500,000. Any person with half a million dollars in networth is smart enough to make his or her

own financial decisions and does not need the state to babysit his investment decisions.

b. Networth needs to include all real estate. The home an investor lives in is a major asset. This is currently excluded in the definition of “financial assets”. That should be changed ! Some investors chose to have a big house, but less cash to invest, whereas another person with the same net worth chooses to rent and invest all his cash. That should be up to the individual, not the state. Therefore, the networth is critical, not the term financial assets which excludes the personal home.

c. The total household income should be lowered to a total of $150,000 or $90,000 per person. People at this income level are smart enough to make their own decision. The current income thresholds for accredited investors are too high.

d. It should allow a person to “self declare” income for example a business owner that might draw only $60,000 from his business could declare himself “accredited”.

3) In addition, the issuer should be required to divulge more past and project financial information, even to accredited investors, but certainly also to eligible investors using an OM: it should lay out in a page or two how the projected returns are to be achieved, i.e. what assumptions are made about the future. This would allow any investor to make a judgement call on the reasonableness of these assumptions. Major abuse is happening today, primarily by issuers, but also the sales community, in that little financial information is projected or even discussed, especially for accredited investors. As an example, if I operate a gold mine and I need to have $3000 per ounce as my break even point, but gold is trading at $1500, then I can make a decision about the reasonableness of this projections. Any investment is about THE FUTURE. Hence, the future needs to be discussed – namely by stating the assumptions.

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?

Many registrants, like most traditional financial advisors, are not advisors. They are SALES PEOPLE who work for a commission. By its nature they are biased to sell as much as possible for the highest total commission. I do not go to a BMW dealer to get advice on a car. He will not recommend me a Toyota although that might be a more appropriate vehicle. I expect him to sell me a BMW.

Any person calling him- or herself an advisor should not take a commission, but an hourly fee.

A person taking a commission should not be called “advisor”. They gravitate to high commissions as the initial focus. This gravely skews the investment landscape immediately

negative for the investor in that low commission products do not get sold, or with low priority only.

The national instrument NI 31-303 should be amended: There should be more disclosure about past sales history for SALES PEOPLE or EMD owners who now control access to capital for issuers. It appears that a sales person who has sold non-performing investments for many years can continue to do so. They can always hide behind the “gee, who would have known .. it seemed suitable” .. and move on to the next high commission gig.

Also, while the risk acknowledgement form states “this is a risky investment” not all investments are risky, or riskier than stocks or mutual funds. A syndicated mortgage in first position that might be 60% loan-to-value in an apartment building or commercial shopping center in a major Canadian city is very low risk, whereas a tropical vacation paradise, a land development project with high mortgages or a construction project are higher risks. An existing gold mine that makes money at $1000 an ounce carries the same risk disclaimer as one that is yet to open but requires $3000/ounce as a break even point, etc. Therefore, more useful risk disclosure based on realistic assumptions about future events should be required of issuers. Investor can then decide if this land deal or this gold mine or that software company is appropriate for them given the reasonableness of the issuers assumptions

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

No, it is too high. It should be lowered by 50%, to $75,000.

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

Not in the foreseeable future.

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

If you lowered it, it would be beneficial. If you raised it, it would benefit the high networth individuals that will have access to more lucrative deals.

→ Capital formation is critical in Canada. Disclosure about past sales people recommendations and issuers view of the future affecting their business is critical, and not required today. That should change.

Raising the threshold would deny ordinary citizens investment options. Private Equity based investment options, uncorrelated to the publicly traded stock market, should be increased, not decreased. More disclosure by issuers and about sales people should be required, not higher minimums or higher incomes. Any person with a high school degree should be able to analyze a deal.

9. Should individuals be able to acquire securities under the minimum amount exemption?

Yes.

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

There should be appropriate disclosure by the issuer as to risks, like in the current Offering Memorandum process. The OM process is not broken, although it needs amendment: it needs to lay out a business case in the OM or information sheet and its assumptions about the projected returns. This is missing in the OMs or project information sheets today. Too much legalese with no real world assumptions in the OM. If those assumptions had been in the OM, those many failed companies over the last few years would have raised far less money as it would have been obvious that the numbers do not make sense given prudent real world assumptions (even without the 2008/2009 financial crisis that exacerbated failures, of course).

A limitation to consider is that an investor is allowed only 10% of his net worth into an Exempt Product investment as a guideline, with an option to override this in writing by the investor. It should not be a rule, only a guideline. A signed form, stating that an investor acknowledges he (or she) exceeds the 10% guideline should be introduced.

13. Are there other limitations that should be imposed on the use of the minimum amount exemption? No. See 10 – the 10% guideline.

14. Should the minimum amount exemption be repealed? Yes, it should be lowered by 50%.

15. If the minimum amount exemption was repealed: See 1)

18. Are there any other issues you may have with the AI exemption? See 1)

19. Do you agree with retaining the AI exemption and the definition of "accredited investor" in their current form? No .. see 1

20. What should the income and asset thresholds be? See 1)

21. Should the income and asset thresholds be periodically indexed to inflation? Not for the foreseeable future.

22. If we changed the income and asset thresholds, what would the impact be on capital raising? See 8)

26. Should an investment limit be imposed on accredited investors who are individuals? If a limit is appropriate, what should the limit be? No. The investor should be free to chose his or her own investment, even 100% if they think it makes sense, although an additional form should be signed. The basic guideline (but not rule) should be 10% of networth can be invested into any investment by AIs.

27. If investment limitations for individuals were imposed, what would the impact be on capital raising? It would lower it. The investor should be free to chose his or her own investment, even 100% if they think it makes sense, although an additional form should be signed. The basic guideline (but not rule) should be 10% of networth can be invested into any investment by AIs or even eligible investors.

29. Do you agree with imposing such a requirement? No, although the 10% guideline with an override option by an AI seems a good compromise.

30. Are there alternatives that we should consider?

To re-iterate some of the above comments, six changes should be considered:

1) Ontario should re-introduce OM based investments for eligible investors, not just AI or Minimum Amount Exemption. It is overly restrictive and does not serve the consumer well. Private equity investment options, uncorrelated to the publicly traded stock market, should be increased, not decreased.

2) There needs to be more financial disclosure for issuers about their view of the future and the expected returns, for both AI, Minimum Amount and OM exemption. The OM process is not broken, although it needs amendment: it needs to lay out a business case in the OM and its assumptions about the projected returns. This is missing in the OMs today. Too much legalese with no real world assumptions in the OM or project disclosure information sheet. If those assumptions had been made, those many failed companies would have raised far less money as it would have been obvious that the numbers do not make sense.

3) Amend NI 31-303. Investors need to know more about EMDs and their sales people, i.e. the recommendation history of an individual sales person or EMD owner is. None of this is required today.

4) A person taking a commission should not be called “advisor”. The sales community gravitates to high commissions as the initial focus. This gravely skews the investment landscape immediately negative for the investor in that low commission products do not get sold, or with low priority only.

5) Drop the requirement for an IFRS audited financial statement for issuers below a certain threshold, say a sub-$100,000 opening balance sheet or sub $2M total raise target. The costs are prohibitive. Rules & disclosure need to be reasonably aligned with project sizes, as a restaurant that needs perhaps $250,000 investment for a refurbishment needs to be treated differently than a $20M+ real estate or resource play. Different guidelines, with more and more disclosure requirements for larger players 9and associated sales community), somewhat less regulations for smaller deals.

6) Reduce the AI and AM thresholds. Do not increase them. Increase disclosure by issuers and of sales community instead.

Please feel free to contact me for additional clarifications by phone or email.

Yours truly,

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