Norman Light
President, Enlightened Private Capital Inc.
23 Bobwhite Cr.
Toronto, Ontario M2L 2E2
416-855-0654

Canadian Securities Administrators
c/o Ontario Securities Commission
20 Queen St. West
Toronto, ON

February 26, 2012

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

Dear Sir or Madam,

This letter is in response to a request for written comments on this proposal. I attended the second of the consultation sessions held by the OSC and was asked to also respond in writing.

Enlightened Private Capital Inc. (EPC) is an Exempt Market Dealer which raises funds for small companies, mainly start-ups, with a typical raise in the $750,000 to $2 million range. As start-ups are very important to Canada's economy, it is important that they be able to raise capital at a reasonable cost so bringing forth additional regulations would not be desirable. At the same time, private investments including start-ups can be risky investments so it is important that investors understand and be in a position to bear the risks of such investments.

In this context, EPC has developed practices which go well beyond the current regulatory requirements, but keep the additional costs to companies at a minimum:

1. EPC does not use the Minimum Amount to govern the suitability of an investment for an investor. Our view is that just because someone

is able to write a cheque for $150,000, does not mean that they have sufficient assets to absorb a possible complete loss nor does it mean that they understand the investment.

2. EPC only deals with Accredited Investors (AI)
3. EPC goes beyond the AI criteria and also uses a "percentage of net worth" test to ensure that the amount being invested is prudent. This will vary by the nature of the investment but will generally not exceed 5% for a start-up investment. Even here, judgement is required as it may be fine for someone with $20 million dollars in financial assets to invest more than 5% in a single investment.
4. EPC ensures that there is appropriate disclosure to the investor as to the nature of the investment, the market that the company's products is addressing, competition, the risks that the company faces, the illiquidity of the investment, the risk of total loss, EPC's fees, etc.

In this context, EPC does not see a need to tighten the (AI) dollar criteria but would rather see the criteria expanded to include of the value of pension plans and investment real estate, which can be substantial assets for some investors.

Other criteria proposed for comment, such as tying the use of the exemption to specific investment or work experience, portfolio size or education would only serve to significantly reduce the supply of investor funds and, therefore, exacerbate the capital shortage that is already acute in the small end of the market. We have seen cases where the best individual to assess the merits of an opportunity is a scientist or doctor with no investment experience, rather than an investment professional, so it's not clear how one would develop workable criteria without excluding some investors who should be eligible.

The key to protecting investors, however, is to use the AI criteria in conjunction with an assessment of suitability, as is currently performed by a registrant through the Know Your Client and other processes. Without such a linkage, a company can accept an investor's life savings simply because they are "Accredited". This makes no sense.

In addition, there should be a requirement for basic disclosure of the nature of the investment, the market need that is being addressed, the use of funds, the risks, the competition, etc. The CSA should prescribe the items to be disclosed but not the form of disclosure. The issuer may already have all of

these items covered in a Business Plan and should not then have to re-write it to fit into some regulatory disclosure format. If a stand-alone document, this should take no more than five pages, although most issuers will aim for a document that is more comprehensive. But if the requirement is too broad, the line and cost differential between prospectus disclosure and exempt disclosure will become blurred.

Having a registrant lead the distribution of the securities, while desirable, could add significantly to issuer costs. Requiring that a registrant fulfill the more limited role of judging the suitability of the investment for investors, however, would significantly strengthen the process at a modest additional cost to issuers. This would also have another significant benefit, which is discussed below.

A major related problem is the number of individuals who are acting as EMD's but are not registered to do so. At the consultation session, OSC staff confirmed that the largest proportion of fraud or situations where investors have invested in securities inappropriate for them, involves issues where no registrant was involved. I believe that this problem has grown under the new rules, due to the massive increase in costs brought on by these rules (500% for EPC) and the hundreds of hours of course time required, all of which provides a disincentive for people and firms to register. The problem is likely larger in those provinces that didn't require registration previously, but nonetheless is a significant problem in Ontario as well. Unfortunately, any tightening of the AI rules, introduction of requirements for some minimum disclosure, etc. will further decrease the likelihood that these people will register.

I submit that the largest risk of fraud is from individuals and firms who are unregistered. Why would a fraudster go to all the trouble and expense of getting registered? So if the OSC were to adopt a rule that an issuer must have a suitability test done by a registrant, this would provide much stronger protection to investors who are being "served" by non-registered individuals. For those honest among them, and there are many, this wouldn't put them out of business as they could either register or operate through the use of referral arrangements with registrants.

In summary, the CSA has initiated a useful process to review the appropriateness of the Minimum Amount and AI Exemption. Based on our experience, a "tightening" of the dollar criteria for the AI Exemption would

have a significant negative effect on the ability of small firms to raise capital. As a result, we recommend that the dollar criteria not be raised and, in fact, that the allowable assets be expanded somewhat to include pension plans and investment real estate. Most importantly, it is critical that the use of this exemption be complemented with some basic disclosure by the issuer and that the suitability of the investment be judged by a registrant.

Thank-you for the opportunity to participate in this consultation process.

Sincerely,