



February 27, 2012

**VIA E MAIL**

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  
Registrar of Securities, Northwest Territories  
Registrar of Securities, Yukon Territory  
Registrar of Securities, Nunavut

**CSA Request for Comments on CSA Staff Consultation Note 45-401 – Review of Minimum Amount and Accredited Investor Exemptions – Public Consultation**

We are writing in response to the request of the Canadian Securities Administrators (the “CSA”) for comments (the “Request for Comments”) in respect of the review of Minimum Amount (MA) and the Accredited Investor (AI) Exemptions contained in National Instrument 45-106 Prospectus and Registration Exemptions (“NI 45-106”).

We appreciate the opportunity provided by the CSA to provide comments on these initiatives.

We would also like to take this opportunity to applaud the continued efforts of the CSA to ensure investors are protected from unfair, improper or fraudulent practices while at the same time fostering fair and efficient capital markets.

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**Background of Use of the MA and AI Exemptions by Plazacorp Retail Properties Ltd (“Plazacorp”)**

We would like to emphasize how important both the MA and the AI exemptions were to Plazacorp in the early stages of our growth. Plazacorp is a publicly traded real estate development company focused on the acquisition, development and redevelopment of retail real estate in Atlantic Canada, Quebec and Ontario. We initially went public through the Junior Capital Pool Program (now the CPC Program) and have been listed on the TSX Venture Exchange (or its predecessors) since July 1999. At the end of our first fiscal year, October 31, 1999, we had \$20.8 million in assets. As at September 30, 2011, we had total assets of \$548 million and as at January 30, 2012 a market capitalization of \$290 million (based on a share price of \$4.85 per share).

Access to capital in the exempt market was one of the key factors that fueled our growth over the past 13 years. Plazacorp’s business required that we had the ability to raise capital in small amounts. In our experience, it was not possible to raise these smaller amounts of capital through registered brokers in the timelines that we required or at reasonable costs. Most firms that we spoke to over the years were willing to raise capital for us, but at amounts that far exceeded our needs. We felt this would have been too dilutive to shareholders or could have led to decisions that were inconsistent with our business plan. To avoid this, we were able to raise money through private placements, in which we primarily used the minimum subscription amount and, later when it was available, the accredited investor exemption.

*1. What is the appropriate basis for the MA exemption and the AI exemption?*

We believe the primary basis for the MA exemption and the AI exemption should be based on financial resources which include both the ability to withstand financial loss and the ability to obtain expert advice.

Having the financial resources to obtain expert advice is of primary importance which would allow a potential investors who may not have the educational background, work or investment experience to evaluate the investment on their own.

By basing the criteria solely on educational background, work experience or investment experience, we are concerned that this may unnecessarily restrict the ability of some investors from participating in good solid investments.



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?*

While in theory the involvement in the distribution of a registrant sounds like it would be beneficial to investors who are interested in making investments under either the MA or the AI exemption, in reality, we respectfully submit that this has the potential to significantly restrict small and mid-size companies from accessing this market.

If a requirement was imposed on registrant firms that they must be involved in the distribution of all securities on the exempt market utilizing the MA or the AI exemption, they would very likely require significant compensation from the issuer in order to take on this task. The level of compensation may be too high for some issuers and would for all practical purposes cut-off this source of capital-raising for small to medium size issuers. We are also concerned that placing this requirement on registered firms which, due to their business focus may not be willing to raise capital in smaller amounts or for smaller issuers, would again effectively cut off this source of capital-raising by small to medium size businesses.

While we want to be clear that we are not opposed to firms being involved in distributions on the exempt market, we are opposed to this being a requirement rather than an option for issuers or investors for the reasons described above.

Minimum Amount Exemption

We agree with the comment that an exemption based on a minimum amount invested may cause an investor to invest more than the business or investment considerations may dictate solely to meet the threshold. Our experience has been that we utilized the MA exemption only until we were able to utilize the AI exemption uniformly across all jurisdictions in which we were raising capital. There were instances in which we may have had investors who, after performing their own due diligence, were interested in investing an amount less than the minimum subscription amount with our company. We valued their support but could not accept their subscription which left both the investor and our company disappointed with the outcome. There may also have been other scenarios where investors may have only wanted to invest \$100,000 but instead invested \$150,000 in order to comply with the minimum amount, going beyond what their original comfort level may have been. With the advent of the AI exemption, this problem was eliminated.

Our overall view of the MA exemption is that it restricts the decision-making power of both the investor and the issuer from what is an appropriate investment amount for a particular investment. Because of this reason, we are generally in support of whatever amendments the





CSA wishes to make to this exemption, including the elimination of the exemption altogether, provided other exemptions (primarily the AI exemption) are still available for issuers and investors to access, thus allowing small and medium sized business to continue to raise capital in the exempt market.

### The Accredited Investor Exemption

We are strong supporters and have extensively used the AI exemption in the past. We believe that this is an effective method of allowing small and medium-sized businesses to raise capital in manageable amounts, while at the same time providing protection for the public from the potential of unfair, improper or fraudulent practices of issuers.

#### *Use of the AI Exemption to Raise Capital*

We are very concerned that potential changes to the AI exemption could significantly affect the ability of small and medium-sized businesses to raise capital. We encourage the CSA to keep this in mind when drafting potential changes to this exemption.

#### *Current Thresholds for Income and Assets*

We understand the concerns that some stakeholders may have indicating that the current thresholds are too low by today's standards. However, we are concerned that a unilateral increase to the threshold may inadvertently eliminate the ability of some sophisticated investors who do have the financial resources from making a sound investment with a well-respected issuer. This could restrict the pool of potential investors significantly, thus making it more difficult for small and medium-sized businesses to find the investors they need in their capital-raising efforts.

If the CSA does believe strongly in increasing the threshold, perhaps a graduated threshold may be considered. For example: i) investors, alone or together with a spouse, with a financial net worth of \$1 million - \$1.999 million or net income of certain amounts may be able to invest any amount up to a maximum of \$150,000 on a particular investment; ii) investors, alone or together with a spouse, with a financial net worth of \$2 million - \$4.999 million or net income of certain amounts may be able to invest any amount up to a maximum of \$300,000 on a particular investment; iii) investors, alone or together with a spouse, with a financial net worth of \$5 million or greater or has net income of a certain amount may be able to invest any amount with no maximum on a particular investment.

#### *Qualification Criteria*

We are concerned that the CSA is considering limiting the use of the AI exemption to certain investors such as institutional investors and thereby eliminating the ability of individuals to



utilize the AI exemption. In the early stages of Plazacorp's growth, while we did have some institutional investors, many of our investors were individuals or their holding companies. By limiting the use of the AI exemption to institutional investors, we are concerned that this would severely impact the ability of small and medium-sized businesses from raising capital.

We are also concerned with some of the alternative qualification criteria for individual investors that are being suggested if they were used in place of income or asset thresholds. In our experience many investors are business persons who have experience running their own businesses and have created a certain amount of wealth, which they are looking to preserve and grow. These individuals may not have been educated with Canadian Securities Courses or CFA designations. Most have not worked in the financial sector in a professional position. While many may have investment experience or a certain investment portfolio size, we are concerned with how this criteria would be monitored and whether a requirement to disclose such information would be viewed by the potential investor as an invasion of privacy and ultimately limit the ability of businesses to raise capital using the AI exemption.

The CSA staff consultation note 45-401 indicates that some stakeholders have suggested that income and asset thresholds are not adequate proxies for sophistication. We respectfully submit that individuals who have achieved a certain level of wealth are generally motivated to retain this wealth and therefore while the use of asset or income thresholds may not be the only criteria in determining sophistication, we respectfully submit that it is the most practical and easily understood. In addition, it is important to remember that persons who are meeting the income or asset thresholds have the necessary financial resources and can always obtain advice from a third party on the merits of a particular investment should they choose.

If the CSA wished to open up the definition of accredited investor to include additional criteria for those who may not meet the income or asset thresholds, we would support this decision. We would not be in support of using the additional criteria as a replacement of the income or asset thresholds or as additional requirements for persons who already meet the income and asset thresholds.

#### *Compliance with Qualification Criteria*

We understand the concerns that regulators may have that some individuals purchasing securities under the AI exemption are not in fact accredited investors. However we are concerned with the suggestion that an investor's AI status be certified by an independent third party, such as a lawyer or qualified accountant. This may place unnecessary additional costs on the investor or potentially on the issuer, and again will likely restrict the ability of issuers to raise capital quickly and efficiently.

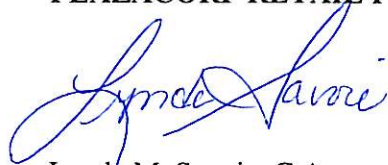


We respectfully submit that perhaps the possibility of a formal review of an investor's AI status by a securities commission may be sufficient to deter any investors who are not AI investors from making investments as accredited investors. We also respectfully submit that the responsibility of issuers in determining if an investor meets the qualification of AI should be limited to obtaining enforceable representations in the form of a subscription agreement. The onus of proof regarding if an investor is an accredited investor should rest with either the investor or, if they are utilizing the services of a registrant firm, with the registrant.

Thank you again for the opportunity to participate in this review process. Should you require further information, please call me at 506-444-6449.

Yours very truly,

**PLAZACORP RETAIL PROPERTIES LTD.**



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