



February 28, 2012

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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

**Attention: Gordon Smith**  
British Columbia Securities Commission  
**Anne-Marie Beaudoin**  
Autorité des marchés financiers

Dear Sirs:

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

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Thank you for the opportunity to provide our comments on the minimum amount exemption (the “MA Exemption”) and the accredited investor exemption (the “AI Exemption”). Olympia Trust Company (“Olympia”) is a non-deposit taking trust company that provides, among other things, registered plan administration services and transfer agency services in the Provinces of Alberta, British Columbia, Saskatchewan and Manitoba. As such, Olympia is actively involved in the exempt securities market and has a good sense as to the market needs in Western Canada. More specifically, Olympia acts as administrator of approximately 70,000 registered investment accounts which hold over \$2 billion in exempt market securities.

## Consultation questions

### 1. What is the appropriate basis for the minimum amount exemption and the AI exemption?

We feel the sole basis for the MA Exemption should be the total cash value of the investment. If an investor has the financial resources to invest \$150,000 in a single investment, they clearly have the resources available to obtain financial and legal advice to conduct all necessary due diligence. As well, we should be able to assume investor sophistication on any party willing to invest such a significant amount in a single investment.

As for the AI Exemption, we feel the current definition of accredited investor could be expanded to include educational background, work experience or investment experience. The current definition of an accredited investor is primarily focussed on financial resources and we feel it unnecessarily restricts many other market participants who are sophisticated enough to protect themselves.

### 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?

Although we are not concerned with the MA Exemption and the AI Exemption, we do feel the involvement of registrants does provide additional support to the investor.

### 3. Do you have comments on the issues described in background #3?

From my experience, there are very few individuals that use the \$150,000 MA Exemption that are not in fact sophisticated. If you have the financial resources to withstand a financial loss of that magnitude on one investment, almost all such persons would be familiar with engaging advisers where necessary and conducting due diligence on their investment. Given the current economic environment, I submit that \$150,000 is still a significant amount and no inflation increase is required in order for the assumptions underlying the exemptions to remain true. That is, I submit that a person investing \$150,000 in one investment would be just as likely as a person investing \$265,000 to conduct adequate due diligence on the issuer. In either case, the investment is significant in today's market.

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

No.

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

Yes, the \$150,000 threshold is still appropriate. I submit that the MA Exemption maintains a good balance between market efficiency and market integrity. Securities regulators should be reluctant to shift our regulation too far toward protecting market integrity as the result will be an inefficient marketplace causing greater damage to investors.

### 6. How much should the minimum investment threshold be increased?

It should not be increased.

**Would your answer to this question change depending on whether:**

- **any disclosure is provided to investors, including risk factor disclosure?** Not necessary.
- **the purchaser is an individual, instead of an institutional investor?** The MA Exemption should be available to all.
- **the security is novel or complex?** Securities regulation should have general application and should not be security specific.
- **the issuer of the security is a reporting issuer?** Not necessary.
- **a registrant is involved in the distribution who has an obligation to recommend only suitable investments to the purchaser?** Not necessary.

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

No, the MA Exemption should be periodically reviewed to ensure the underlying assumptions are still correct (ie that the amount invested is still significant enough to conclude the purchaser is sophisticated).

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

Any increase to the minimum threshold will have an adverse effect on capital raising, without any conclusive benefit being derived.

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

Yes. The assumptions underlying the exemption are the same for individuals as they are for institutions (and are possibly even more accurate for individuals). That is, I would expect a person to be more diligent with their own finances than an institution.

**Would your answer to this question change depending on whether:**

- **any disclosure is provided to investors, including risk factor disclosure?** Not necessary.
- **the security is novel or complex?** Securities regulation should have general application and should not be security specific.
- **the issuer of the security is a reporting issuer?** Not necessary.
- **a registrant is involved in the distribution who has an obligation to recommend only suitable investments to the purchaser?** Not necessary.

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

No, the \$150,000 minimum threshold for the single investment amount is the necessary limitation.

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

Excluding individuals from the MA Exemption, will have an adverse effect on capital raising, without any conclusive benefit being derived.

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

Education and investor experience could serve as alternate criteria but I suggest that these criteria could be better addressed under the AI definition.

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

No.

**14. Should the minimum amount exemption be repealed?**

No.

**Would your answer to this question change depending on whether:**

- **any disclosure is provided to investors, including risk factor disclosure?** Not necessary.
- **the purchaser is an individual, instead of an institutional investor?** Not necessary.
- **the security is novel or complex?** Securities regulation should have general application and should not be security specific.
- **the issuer of the security is a reporting issuer?** Not necessary.
- **a registrant is involved in the distribution who has an obligation to recommend only suitable investments to the purchaser?** Not necessary.

**15. If the minimum amount exemption was repealed:**

- **would that materially affect issuers' ability to raise capital?** Yes, why would we unnecessarily deny Canadian issuers access to capital. If the underlying assumptions to the MA Exemption remain true, why wouldn't we provide Canadian issuers with as many alternatives as possible to raise capital and create value for their shareholders.
- **is the AI exemption (in its current or modified form) an adequate alternative to the minimum amount exemption?** The AI Exemption is a good alternative but I don't see the need to remove the MA Exemption simply because the AI Exemption is available. If investors are sophisticated in either case, I submit that we should maintain both exemptions.

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

No, we need to stop modifying securities regulation just for the sake of making changes. We should be making changes where change is required, otherwise the laws should simply be maintained so the

market can gain a better understanding of the rules. I submit that the constant changing of securities laws is more of a threat to the investing public than either the MA Exemption or the AI Exemption.

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

Please maintain the status quo and resist the temptation to unnecessarily change securities laws just for the sake of change (without any evidence of harm or other necessity driving the change).

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

Yes, it should be expanded to include educational background, work experience and investing experience concepts.

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

As noted above, I support the existing financial criteria set out in the AI definition but I believe the definition could be expanded to allow lawyers, accountants and others with investing experience to also be considered AIs. In the current economic environment, we should be assisting issuers in accessing capital from sophisticated investors as opposed to further limiting the available capital.

**20. What should the income and asset thresholds be?**

I submit that the income and asset threshold should be maintained in their current form. Again, these amounts are still quite significant in the current market. To increase the income threshold to \$443,000 would make the exemption practically unavailable to all but a small percentage of the wealthiest Canadians.

**Would your answer to this question change depending on whether:**

- **any disclosure is provided to investors, including risk factor disclosure?** Not necessary.
- **the security is novel or complex?** Securities regulation should have general application and should not be security specific.
- **the issuer of the security is a reporting issuer?** Not necessary.
- **a registrant is involved in the distribution who has an obligation to recommend only suitable investments to the purchaser?** Not necessary.

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

No, the AI Exemption should be periodically reviewed to ensure the underlying assumptions are still correct (ie that the income and asset amounts are still significant enough to conclude the purchaser is sophisticated).

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

Any increase to the income and asset thresholds will have an adverse effect on capital raising, without any conclusive benefit being derived.

**23. What qualification criteria should be used in the AI exemption for individual investors?**

The criteria should be limited to one of: asset amount; income amount; education; work experience; or investing experience.

**Would your answer to this question change depending on whether:**

- **any disclosure is provided to investors, including risk factor disclosure?** Not necessary.
- **the security is novel or complex?** Securities regulation should have general application and should not be security specific.
- **the issuer of the security is a reporting issuer?** Not necessary.
- **a registrant is involved in the distribution who has an obligation to recommend only suitable investments to the purchaser?** Not necessary.

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

I think the qualification criteria should be expanded to include more focus on educational background, work experience and investing experience so that capital raising from sophisticated individuals is made easier for issuers. Any increase to the asset or income thresholds will have an unnecessary adverse effect on capital raising as many (sophisticated) investors will not be eligible to use the exemption.

**25. Should individuals be able to acquire securities under the AI exemption?**

Yes. The assumptions underlying the exemption are the same for individuals as they are for institutions (and are possibly even more accurate for individuals). That is, I would expect a person to be more diligent with their own finances than an institution.

**Would your answer to this question change depending on whether:**

- **any disclosure is provided to investors, including risk factor disclosure?** Not necessary.
- **the security is novel or complex?** Securities regulation should have general application and should not be security specific.
- **the issuer of the security is a reporting issuer?** Not necessary.
- **a registrant is involved in the distribution who has an obligation to recommend only suitable investments to the purchaser?** Not necessary.

**26. Should an investment limit be imposed on accredited investors who are individuals?**

No limit should be imposed on an individual. Securities laws should be about balancing market efficiency with market integrity. If the whole premise of the AI Exemption is that an investor is sophisticated and can make an informed decision, why do securities laws need to unnecessarily impose limitations. Does an individual with more than \$1,000,000 in financial assets really need securities laws to impose arbitrary investment limitations, I submit they do not. Again, this would be additional regulation for the sake of regulation as opposed to regulation implemented to protect individuals from a known harm.

**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?** Not necessary.
- **the security is novel or complex?** Securities regulation should have general application and should not be security specific.
- **the issuer of the security is a reporting issuer?** Not necessary.
- **a registrant is involved in the distribution who has an obligation to recommend only suitable investments to the purchaser?** Not necessary.

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

Any investment limitation for individuals will have an adverse effect on capital raising, without any conclusive benefit being derived. Any narrowing of this exemption will have an unnecessary adverse effect on capital raising as many (sophisticated) investors will not be able to invest as much as they otherwise may have invested if there was no limit.

**28. An issue with the AI exemption is ensuring compliance with the qualification criteria. One way to improve compliance with the AI exemption would be to require an investor's accredited investor status to be certified by an independent third party, such as a lawyer or qualified accountant. Should this be considered in a review of the AI exemption?**

At what point do individuals have to accept some market responsibility? No matter what the regulation, you can only help those that want to be helped. Why should we tailor our national securities laws in an effort to protect individuals willing to falsify documents? To burden our system yet again with more hurdles and costs of capital, we will make it more difficult to encourage economic growth and development. As all costs of capital are ultimately borne by the investors, I submit that the investors are better served by the capital going to the issuers as opposed to verifying representations that the individual should easily know. A third party verification requirement for AIs would be a major detriment to the exempt market.

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

I strongly disagree with such a requirement.

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

No. If anything you should expand the AI Exemption to allow for educational background, work experience and investing experience.

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

I encourage you to maintain the status quo and keep the AI Exemption in its existing form. I submit that all market participants need some regulatory consistency in order to better understand the legal requirements. By continuously changing the rules, all market participants are adversely effected.

Thank-you for allowing us an opportunity to provide comments. If you have any questions or concerns, please call me direct at 403.668.8365.

Yours truly,

**OLYMPIA TRUST COMPANY**

Per: \_ (Signed) "*James Bell*"  
James Bell  
General Counsel

cc: **Western Exempt Markets Association**