SIPA
SMALL INVESTOR PROTECTION ASSOCIATION

A Voice for Small Investors

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Gordon Smith
British Columbia Securities Commission
PO Box 10142, Pacific Centre
701 West Georgia Street
Vancouver, British Columbia
V7Y 1L2
Fax: 604-899-6814
e-mail: gsmith@bcsc.bc.ca

M[e] Anne-Marie Beaudoin
Corporate Secretary
Autorité des marchés financiers
800, square Victoria, 22[e] étage
C.P. 246, Tour de la Bourse
Montréal, Québec
H4Z 1G3
Fax : 514-864-6381
e-mail: consultation-en-cours@lautorite.qc.ca

Re: CSA STAFF CONSULTATION NOTE 45-401, REVIEW OF MINIMUM AMOUNT AND ACCREDITED INVESTOR EXEMPTIONS - PUBLIC CONSULTATION

The majority of Canadians are not sophisticated investors. Over a lifetime many Canadians accumulate substantial savings and most depend upon a registered representative to advise them on investments. Retail investors are generally not aware that the individual they depend upon for advice does not have a fiduciary duty and often may a salesman with a limited range of products to sell.

The lack of a fiduciary responsibility for those representing themselves as financial advisors results in many abuses. While the rules and regulations may appear to protect investors it is not unusual that they are circumvented or simply ignored. Failure of firms to accept responsibility for the acts of their representatives results in widespread abuse of investors.

Although qualification of investors is anticipated by regulators by the use of a Know Your Client form that represents details of the investors income and net worth, the lack of a requirement that they be prepared by the investor and a copy provided to the investor results in KYCs that lack integrity. In some cases net worth and income have been bumped up to satisfy minimum requirements for accredited investors.

As long as there is a lack of integrity in the investment industry and no requirement for those who act as financial advisers and their firms to owe their clients a fiduciary responsibility the abuses will continue.

We offer the following general comments for your consideration:

Principles underlying the minimum amount exemption and the AI exemption

Although the minimum amount exemption and the AI exemption have been premised on an investor having one or more of:

- a certain level of sophistication,
- the ability to withstand financial loss,
- the financial resources to obtain expert advice, and
- the incentive to carefully evaluate the investment given its size.

To rely solely upon a dollar amount to determine whether an investor is accredited or not is not acceptable. There are many widows who know little or nothing about investing but have been left with a million dollars or more on the passing of their spouses. Many have been reduced to poverty when they depended upon financial advice received.

Lack of a means of establishing retail investors' investment qualifications suggests that limiting accredited investor exemptions to institutions would be an acceptable solution if there is any concern for protecting retail investors.

Exemptions from the rules and regulations can and does result in normal measures for investor protection being avoided. Not all Canadians are aware or understand the implications.

A fiduciary responsibility for all who offer financial advice or represent themselves as "Financial Advisors", "Investment Consultant", or other title would eliminate many of the problems retail investors no face.

It would seem reasonable that in addition to stipulated amounts there should be a limit on the percentage amount of investment assets be imposed to ensure that investors do not put "all of their eggs in one basket.

Retention of monetary limits of total assets of $1 million and annual salary of $200,000 should help to protect the small investor provided the regulators provide increased vigilance to monitor KYCs to minimize the practice of bumping up amounts to allow small investors to qualify as accredited investors.

Generally the rules and regulations if followed would provide a good degree of investor protection, however exemptions have often provided opportunity for those who are less than scrupulous in their dealing with the public to take advantage of unsophisticated investors, or those who continue to believe that those who provide advice or sell financial products owe a fiduciary duty to their clients.

In SIPA's communications with thousands of small investors it is painfully apparent that the majority of small investors believe there is a fiduciary duty for those to whom they have entrusted their savings.

Whether it is establishing requirements for determining accredited investor qualifications or revising existing rules and regulations, unless and until fiduciary requirements are established for those who provide advice associated with the selling of products, investors will continue to fall prey to those who would feed upon the investing public.

Yours truly

Stan I. Buell