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To:

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:

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Submitted by E-mail

Dear Sirs and Mesdames:

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

Independent Financial Brokers of Canada (IFB) is submitting this letter in response to the CSA's request for comments on the existing minimum amount exemption and accredited investor prospectus exemption available under National Instrument 45-106 *Prospectus and Registration Exemptions*.

IFB is a professional, trade association representing approximately 4,000 provincially-licensed financial advisors across Canada. Many of our members are registered to sell mutual funds and/or securities and generally would hold other financial licenses to enable them to provide more comprehensive advice and product selection for their clients.

IFB supports a regulatory environment which promotes investor confidence and protects investors from unfair, fraudulent and improper practices. IFB offers its members compliance support, a comprehensive errors and omissions insurance program, sponsors industry continuing education events and promotes sound business practices, including adherence to our code of conduct.

General observations regarding this consultation

We agree with the CSA that in reviewing whether changes to the minimum amount (MA) exemption and the accredited investor (AI) exemption are warranted, it must be guided by identified risks to investors and markets, and that the benefits of additional regulation must be proportionate to any additional costs or restrictions they impose on the marketplace. However, it concerns us that the CSA has provided little rationale for initiating this review at this time, making only passing reference to the "global financial crisis and recent international regulatory developments". We believe that before the CSA embarks on an exercise which could have major implications for the exempt market and how its products are sold, it should provide concrete evidence to substantiate such action.

Secondly, National Instrument 31-103 (NI 31-103), which established a new regulatory structure for Exempt Market Dealers and set new proficiency requirements for advisors selling exempt market products, only came into effect on September 28, 2009, with a further one year transition period for existing firms and representatives. It seems rather premature to be considering changes to the AI and MA exemptions given the short time the new rules have been in place and the costs already incurred by EMDs and advisors to meet these new requirements.

Thirdly, our members are very concerned about the lack of uniformity that exists today across Canada between those jurisdictions which have adopted the AI and MA exemptions under NI 45-401 and those who participate under the Northwestern Exemption. This has created an uneven playing field where investors in the western provinces can invest in exempt products at a much

lower threshold than in Ontario, for example. This creates confusion and inequities. We think this situation should be addressed so that investors and other exempt market participants do not face barriers based solely on the jurisdiction they reside in or do business in.

The CSA has posed a number of questions to assist in its review. In preparing our response, IFB surveyed members to gather their input. Advisors are well-positioned to understand firsthand the problems or impositions that the existing exemptions pose for clients.

What the survey told us

Many of our members said they do not sell exempt market products, or only have referral arrangements in place, often because of the AI restrictions. Of those that do sell, most are licensed in Alberta, BC and Ontario, with a smaller number in Manitoba and Saskatchewan. Taken together, however, the majority sell under the Northwestern Exemption, which they have found to be generally fairer for investors than the exemptions in place elsewhere.

We found little support for continuing the current minimum amount exemption of \$150,000 or the AI exemption. There was overwhelming agreement that setting an arbitrary dollar threshold is not a valid indicator of an investor's level of sophistication or ability to withstand market losses. Far more important is full disclosure of the investment risk and the suitability assessment which takes into account the investor's risk profile, experience, net worth and volatility of the investment, et cetera. The concern with the current exemptions is that they segregate investors into groups based on factors that may not be relevant. For example, a retired individual may have significant assets but low personal income. Survey respondents said, "*Compliance and rules should be about protecting investors, not excluding them from opportunities*". "*Regulators should not be caretakers*".

Many respondents pointed out that no similar tests exist for other investments which can be more volatile and higher risk. There was no support for the idea of using alternative qualification criteria such as having an independent third party adjudicate the AI status. This was seen as adding another barrier by adding to the investor's costs and inconvenience, while not providing any material protection.

In conclusion, we support a level playing field for investors across Canada. Investors should have equal access to the exempt market in each jurisdiction. That said, the sale of these products should be through properly registered and regulated distributors, dealers and advisors who are bound by regulation to provide full disclosure and the obligation to recommend only suitable investments. Any decision to change, modify or remove the existing exemptions must include a full evaluation of the potential for negatively affecting the marketplace by increasing costs, reducing the ability of small or start up firms to raise capital, product arbitrage and disadvantaging investors based on their residency.

It would be useful for industry stakeholders to understand the actual experiences of provincial regulators since the inception of NI31-103, with its new regulatory standards for the exempt marketplace, as well as the experience of provincial regulators in the Northwestern Exemption in comparison to those in the non-participating provinces.

We trust our comments will be of assistance. Please contact the undersigned should you have any questions.

Yours truly,

A handwritten signature in black ink, appearing to read 'John Whaley', written in a cursive style.

John Whaley
Executive Director
Email: jaw@ifbc.ca