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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

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Dear Ms. Beaudoin and Mr. Smith:

RE: Comments on the Review of Minimum Amount and Accredited Investor Exemptions

The following are our comments on the concerns about the proposed minimum investment exemption;

1. We agree that the minimum amount exemption does not provide any assurance of investor sophistication, though it does provide higher net worth investors (than your average retail investor) to invest in a variety of investment products generally limited to institutions. We think that it is reasonable to assume that nearly all individuals do not invest all of their funds in any one item, but that eliminating the minimum amount exemption would essentially give the regulatory authorities undue control over both investor alternatives and limit the ability of the investor to discern and decide which investment best suits their risk appetite and return objectives. As it pertains to the objective of protecting the unsophisticated investor (perhaps one that lacks investment acumen and/or common sense) there are limited options, which we believe are already substantively in place. In the case of smaller retail

investors, there are mechanisms in place (for example the offering memorandum exemption available in every province except Ontario) to provide added disclosure and regulation as to the distribution of prospectus exempt securities. In addition, the changes in NI-31-103, which created Exempt Market Dealers (“EMD”) also include additional measures for the protection of investors (through implementation of “Know Your Client” requirements and other measures including bonding and working capital requirements for EMDs).

2. With regards to the current threshold for minimum investment, it is recognized that inflation has occurred, but that \$150k is still substantially more than the typical unsophisticated investor has readily available for such investment.
3. We are concerned that especially in Ontario but also in other provinces, that the increase of monetary threshold for the accredited investor exemption will eliminate all but the wealthiest individuals and institutions in Canada from utilizing this exemption. We do not believe that the intent of securities commissions is to severely limit or eliminate wealthier individuals from investing in prospectus exempt products but this measure most certainly would serve to do so. Equally as distressing is that negative impact on the private capital markets, which have benefited substantially from the exempt offering market, and have a strong reliance on this source of capital. Legitimate and highly prospective private issuers will be severely hampered by such a measure.
4. The main use of the minimum threshold is to make investments available to those who are not Accredited Investors, which requires net worth values far in excess of the minimum capital rules.
5. Repeal of this would impact our Ontario sales, but not elsewhere since the OM exemption exists. To mitigate concerns about sophistication and disclosure, one possible solution would be to provide the OM disclosure documents as part of the \$150k minimum amount exemption – for Ontario ONLY – as the other provinces have no need for this.
6. We support the proposition that there should be no further limitations to the minimum amount exemption, other than providing disclosure documents (similar to OMs – as Ontario is the largest area we are affected by). In fact, one reason why we think this issue was initially raised was that issuers that wish to market private placement offerings in Ontario don’t have an OM exemption to rely on with products that are already sold elsewhere in Canada.

Comments on the Accredited Investor Exemption

1. We feel that the existing regulations of \$200k per annum individual income and \$300k per annum with a spouse is still a very onerous threshold – and there is NO minimum amount purchasable by an accredited investor – so for instance, a financial loss of for instance \$10,000 would have less impact on an accredited investor vs. an eligible investor. Thus, changing the regulations would have not have a substantial impact on improving investor protection.
2. If an investor qualifies with more than \$1M in financial asset, and \$5M in total assets, then in our opinion, that person either has sufficient knowledge or can afford to consult with someone who has the knowledge in a cost effective

manner. Raising the limits would only create havoc for fund raising without any real benefit as it would be protecting a very small percentage of people who have accumulated that level of wealth, but are not sufficiently sophisticated to either manage such investment based on their own investment acumen or engage qualified financial advisors to provide such advice.

3. Someone relying on the AI exemption and selling under the OM exemption such as Optimus already provide all this documentation to the investor (even though it's not required). However, if issuers are forced to spend considerable funds on drafting OMs (in excess of \$100k) but are strictly dealing with existing AI's, then the cost of fund raising could render the effort (for the benefit derived) unaffordable.

In short, for our method of fund raising, using the OM exemption other than in Ontario, the accredited investor and \$150k exemptions do get used, but the disclosure documents provided to these clients are the same as those provided to those buying under the OM exemption. Practically speaking these exemption changes only impact our ability to procure funds in Ontario. It is our strongly held view that by, continuing to provide increased disclosure (such as the what we provide to clients buying under the OM exemption) the regulatory bodies would be able to substantively mitigate the risk of ill-advised or inappropriate investment being made by investors. From the issuer perspective, we welcome a more onerous and detailed imposition of disclosure as is currently being required by the OM exemption recognizing that this will impact those current issuers that choose not to exercise this level of detailed disclosure. We believe that the exempt offerings should be held to a standard, which imposes on those that are procuring investment capital to be more fully transparent and provide a level of detail, working hand-in-hand with the EMD community that will assure the best outcome to both investors and issuers.

Yours sincerely,

Arthur Wong, P. Eng.
Managing Director - Chief Executive Officer
Optimus US Real Estate Fund