



RESPONSE TO CSA STAFF CONSULTATION NOTE 45-401:

REVIEW OF MINIMUM AMOUNT AND ACCREDITED INVESTOR EXEMPTIONS

COMMENTS PROVIDED BY SKYLINE WEALTH MANAGEMENT INC.

Skyline Wealth Management Inc. (“SWMI”) is an Exempt Market Dealer (EMD) registered in all jurisdictions across Canada. SWMI’s head office is located in Ontario but has nearly a quarter of its investor base outside the province. SWMI’s investor base is made up primarily of investors who are qualified under the Accredited Investor (AI) Exemption, but does also have a number of investors qualified under the Minimum Amount Exemption (MA). SWMI holds all investors Canada-wide to the Ontario Securities Commission’s rules and definitions for qualifying investors for an investment in an Exempt Market Product.

The following comments and recommendations are the opinions of SWMI and its stakeholders, including the opinions and feedback collected from investors, with regards to the MA and AI exemptions examination detailed in the CSA’s Consultation Note 45-401: *“Review of Minimum Amount and Accredited Investor Exemptions”*.

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

We do not believe that there is an appropriate basis for the MA or AI exemptions in their present form. They do not assess suitability in a useful or appropriate manner. The premise of judging investor sophistication by their assets or income level is unfounded and there is no proof of any correlation. The MA exemption is self-defeating in an attempt to protect an investor because it forces such a large exposure to a single investment.

It is evident that the current legal basis for an individual’s ability to invest in financial products is a direct consequence of the availability of information on that product. “Information” is considered available, adequate and understandable by the common person if it has been registered with the appropriate governing body and contains the legally required (by that body) amount and type of information. It should be made clear that this in no way is an endorsement by that body as to the quality of the investment – the onus to determine this still rests with the investor. At this point the investor is free to invest on his own or consult an appropriate expert on the product they are seeking.

In the case of Exempt Market Products, the information is deemed “unavailable” (in some provinces it is deemed available and, because of this, individuals can qualify with lower thresholds – i.e. the Offering Memorandum Exemption). Because of this, individuals seeking investments in these products are forced to seek a qualified expert, that is, an EMD. The responsibility is therefore on the registrant to determine

suitability and an appropriate level for the investment, just like any other registered dealer or advisor in Canada. Suitability should be determined as a function of all of the individual's appropriate variables – current financial situation, investment experience, risk tolerance, time horizon, goals, etc.

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?

Yes. The KYC, KYP and suitability requirements placed on the registrants and the fact that an investor MUST seek a qualified registrant in order to invest in one of these products provides protection for the investor. To suggest otherwise undermines the whole existence of the designation. This provides safety in that the registrant is at the least forced to evaluate the investment and the information available, which is not the case in the financial market in general where any person can open a self-directed account and purchase any prospectus-qualified, publicly traded investment vehicle with or without reviewing any information.

3. Comments on issues describing the MA exemption

We believe that the MA exemption is flawed in its purpose. It should not exist, but should only be abolished in conjunction with re-writing the AI exemption appropriately. If the AI exemption is not altered appropriately (as discussed later), we suggest that the \$150,000 amount is excessive. The exemption should be changed to limit the amount an investor can invest to a maximum percentage of their net financial assets as determined by the registrant (for example: a non-accredited investor can invest up to a hard-cap maximum of 30% of their net financial assets in exempt market products as a total asset class). Under this change an accredited investor has no limits on their investment options, but anyone qualifying under this new exemption is limited in their exposure. This satisfies the requirements that the investor is protected in their ability to take a loss no matter their perceived level of sophistication, but still allows the industry to raise capital in a responsible manner. All investments are still required to pass the suitability tests as applied by a registrant.

NOTE: Questions 4-16 become irrelevant in relation to the answer above.

17. Comments on issues describing the AI exemption:

Many things about the AI exemption should remain unchanged such as the definitions for qualifications. For example, the specific entities listed and individuals who have been registrants or registered with an SRO of financial bodies should always be qualified as accredited investors. We think the required changes relate to j) and k) of the list of definitions of a qualifying accredited investor under NI 45-106.

Several definitions within j) and k) need to be addressed in relation to the AI exemption. One issue is the exclusion of all real estate in the definition of "net financial assets". We believe a better assessment of someone's ability to withstand a loss should include a measure of real estate that is not an individual's primary residence. Investment real estate should be included in the financial assets assessment since it is often regarded as a portion of one's investment portfolio. Another issue lies in the calculation of income and financial assets as it pertains to a business or privately owned corporation. In an effort to maximize tax efficiencies, should an individual be penalized for limiting the salary he takes from his business? As the sole shareholder of a business, are the assets of the business not theirs? We think that these assets and

incomes should have a place in evaluating the over-all picture of an individual who wants to invest in an Exempt Market Product.

In summary, we conclude that changes to the AI exemption should include:

- i) Redefining financial assets to include investment properties, whether income producing or not, as a financial asset (exclusion of the primary residence)
- ii) Ownership and income from a business should be included pro rata to the ownership as provided by the shareholders list, to be included in financial and fixed assets and income
- iii) Create a short form standard document that outlines the “offering” in plain English with minimum requirements such as, but not limited to, risks and liquidity restraints that must be distributed as part of the evaluation process

SUMMARY

It is our belief that changes must be made to promote and enable the entrepreneurial spirit of our country. The current definitions and limitations on investment act as a deterrent from the perspective of an investor and those seeking capital in this market. In our experience, those individuals that are attracted to the types of investments often represented by Exempt Market Products tend to be the most entrepreneurial individuals, quite often small business owners themselves. With the narrow views on net financial assets and income measurement supported by the current regime, these are the very individuals that are excluded from investing in such ventures because they have made savvy business decisions to limited their exposure to taxes through the use of corporations. One of the goals of Securities Commissions is to protect and promote a healthy a vibrant capital market. We think that these rules limit the ability of the small and medium sized ventures to access this capital market.

Finally, one problem that must be addressed is the disjointedness of the provincial bodies. If each province is to determine their own interpretation of the rules and create their own specific investment environments then this whole exercise by the CSA (which cannot bind the provinces in any way to their judgments) in evaluating the exemptions is futile. As it currently sits, issuers in certain provinces are allowed to totally undermine the essence of the AI and MA exemptions by issuing and registering an Offering Memorandum. If this constitutes adequate “availability” of information (as is at the heart of and is the basis for the prospectus exemption) then all provinces must adopt this philosophy. There must be some form of uniformity across all of Canada.

Mike Bonneveld

Chief Compliance Officer

Skyline Wealth Management Inc.

649 Scottsdale Drive, Suite 402

Guelph, ON

N1G 4T7

Phone: 1.800.800.7368

Email: mbonneveld@skylineonline.ca

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