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British Columbia Securities Commission
PO Box 10142, 701 West Georgia Street
Vancouver, BC V7Y 1L2

Attention: Gordon Smith

cc: Autorite des marches financiers, Anne-Marie Beaudoin

Re: Comment Letter on CSA Staff Consultation Note 45-501

Dear Mr. Smith:

We act as counsel to a number of TSX Venture Exchange listed clients, TSX listed clients and private companies. I have a number of early stage companies in the technology field, many of whom rely on the accredited investor exemptions.

I am writing this letter in response to a notice and request for comment on the above-mentioned subject, review of the Minimum Amount and Accredited Investor Exemptions (the "Exemptions").

I have a number of comments and concerns about any proposed changes to the Exemptions.

GENERAL COMMENTS

There is a serious need for such exemptions to facilitate capital raising. The Accredited Investor Exemption was first proposed in Ontario in the early 2000s, in response to the Task Force on Small Business Financing's report and the Concept Paper published by the Ontario Securities Commission. The OSC recognized the need for exemptions that was more consistent with the market and its investors. The need for such exemptions remains true today.

I am of the view that this review of the Exemptions, as well as Proposed National Instrument 41-103 *Supplementary Prospectus Disclosure Requirements for Securitized Products* ("Proposed NI 41-103") is a reaction to the Asset Backed Commercial Paper ("ABCP") "crisis" that took place in the fall of 2007. ABCP products were exempt products and any purchases by investors were not necessarily because the investors themselves could rely any of the Exemptions.

I am not only strongly in favour of maintaining the status quo for the Exemptions. I would even favour expanding the Exemptions. The benefits of the Exemptions far outweigh any risks; any attempt to remove any of the Exemptions, or to increase the minimum thresholds to be able to rely on the Exemptions, or to require criteria in addition to minimum income or investment levels, such as education or experience as a barometer of an investor who should be able to invest in private companies would have dire consequences on the capital markets, and especially the start-up businesses that have come to rely on the Exemptions and the same start-up businesses that drive our economic growth.

Without the Exemptions there would be a chilling in investments made, especially in private companies in the start-up phase, and this would lead to a further lack of innovation in Canada. This is not something that Canada can afford if it is to become a leader in innovation and productivity.

In the United States, a “crowdfunding” (raising funds from a large group of people) bill has been passed by the House of Representatives. Once passed, this law would make it easier for start-ups to raise money by soliciting investments through social media sites, or sites specifically created to facilitate “crowdfunding”. While there are obvious risks to allowing a crowdfunding model, the proposed legislation in the United States has put certain onuses on the issuers that will use such a model, including certain risk disclosures and filings with Securities and Exchange Commission.

If the CSA makes it more difficult for Canadian early stage Canadian companies to raise money, there will be a mass exodus of these companies to jurisdictions that are more responsive to such companies needs, and Canada will experience a new kind of “brain drain”, one that will impact Canada’s productivity and innovation.

The investors who are in a position to rely on the Exemptions, especially those who can rely on the current minimum income levels, are able to retain professional advisors to assist investors with making a decision on an investment opportunity.

Such potential investors can come from a position of bargaining strength, especially when funding early stage ventures. Such ventures find raising capital to be very difficult, and investors are in a stronger position to request more information from the company.

For investments in reporting issuers, such companies are subject to continuous disclosure requirements, giving potential investors a wealth of information. The same investors can make an investment in the secondary market; this would not give a reporting issuer the injection of capital it needs.

Request for More Information

As part of this consultation process, I hope that the CSA will be able to provide its stakeholders with more information about the use of the Exemptions. It is difficult to make any recommendations or draw any conclusions without knowing the reasons why the CSA is looking at changes to the Exemptions.

In particular, I would like to know the number and dollar figures of exempt offerings based on the Exemptions, and the types of securities products purchased. Without this empirical evidence, it is challenging to answer the questions the CSA poses in its consultation paper.

Involvement of Registrant in Distribution

When a registrant is involved, this could cause greater confusion for an investor. If a registrant makes an investor aware of a potential investment opportunity in a private company, the purpose could be just to make the client aware, and not for the registrant to recommend the investment opportunity. However, as discussed below, the involvement of a registrant could lead to a change in the Exemptions that could make it easier for issuers to access the capital markets.

MINIMUM AMOUNT EXEMPTION

Raising the threshold for minimum investments would have a negative effect on the capital markets. The raised amount would freeze out investors who may not need the protections offered by a prospectus; it will also make it much more difficult for early stage companies that rely on such an exemption for their early investors to either withdraw from raising funds necessary for them to continue their operations, or to undergo the costly expense of preparing a prospectus or offering memorandum.

While an ability to invest in a higher minimum amount does not guarantee any level of sophistication Investors that can rely on a minimum amount should also be in a position to retain professional advisors to help them make an investment decision. There is no assurance that raising the minimum amount would lead to a greater

Involvement of Registrant

If a registrant is involved in the distribution and has an obligation to recommend only suitable investments to the purchaser, then the minimum amount threshold could be lowered. This would provide a number of advantages to the capital markets, including:

- Greater investor protection because purchasers would only be able to invest in securities that are suitable for them; and
- Greater ability for companies to raise necessary capital because of the lowered threshold amount.

Reporting Issuers

I also support a lower minimum threshold for securities issued by a reporting issuer. Purchasers have the benefit of the continuous disclosure record of the reporting issuer. Investors who wish to purchase securities on the open market are not subject to a minimum dollar amount; setting a lower threshold for a minimum purchase is a good compromise to allow companies to raise money and still limit the number of investors that can take advantage of such an exempt purchase.

Individuals as Investors

I strongly disagree with prohibiting individual investors from using the Exemptions. Limiting individuals from investing would have a detrimental effect on companies seeing capital, especially start-up capital.

The main source of funding for start-ups is usually an “angel” investor, an individual who usually qualifies for the accredited investor exemption. Limiting the use of the Exemptions to non-individuals would shut off this source of funding for many companies, especially early stage ventures, which would have a harmful effect on Canadian innovation, and also productivity. Most non-individual investors, such as pension funds, venture capital companies of investment funds, prefer to invest in companies that are further along their development cycle, usually, after a proof of concept or a company has achieved a certain milestone.

ACCREDITED INVESTOR EXEMPTION

Most of the comments I have regarding consultation on the minimum amount exemption can be applied to the accredited investor exemption.

New Categories of Accredited Investors

I am in favour of keeping the status quo for accredited investors. If anything, my preference would be to create new categories of accredited investors, based on education or experience. This would expand the types of investors issuers, especially early-stage companies, would be able to access from whom to raise funds.

Alternative Qualifications

Using alternative qualification criteria for individuals, such as those listed in the consultation note, would be detrimental to the companies that most need to rely on the Exemptions. A number of concerns arise when considering the alternative qualifications. For instance:

- The size of an investment portfolio may vary because of market downturns, but an investor may have a consistent yearly income above the $200,000 threshold;
- The education criteria could be very subjective, and for some potential investors, near impossible to attain. For an investor who has sold a previous venture and has become an Accredited Investor by virtue of the size of their financial assets, to require them to pass the CFA exams and attain the necessary work experience is an onerous burden;
- Without the ability to engage in transactions in early-stage companies, an investor may not be able to develop the necessary investment experience;
- An investor may be able to develop a sizable investment portfolio without necessarily gaining sophisticated investment experience;
- Using an investment portfolio size seems to imply that such investors may have certain sophistication and knowledge, an ability to rely on professional advisers, or an ability to withstand losses. These reasons are very similar to the reasons to allow the Accredited Investor exemption to continue.

CONCLUSION

The Exemptions full a very important role in the business community in Canada. It allows early stage-companies to raise the funds they very much need to grow their operations. Amending the Exemptions to the detriment of such companies, such as imposing higher thresholds for minimum investment levels or income levels, would have adverse consequences to the capital markets.

Jacob Kojfman

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