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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

c/o
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Dear Sirs and Mesdames.

Re: CSA Staff Consultation Note 45-401 – Review of Minimum Amount and Accredited Investor Exemptions – Public Consultation

Introduction

I am a securities and compliance counsel who provides advice to a number of firms from Ontario to British Columbia. I thank you for the opportunity to provide input. I frequently come across an issue that is very frustrating and limiting to my client groups both outside and inside Ontario; but generally is more of a focus of discussion outside of Ontario. My submission is to address this particularly vexing issue and as such I make reference to the Consultation Note and I am providing input to the following questions:

18. Are there any other issues you may have with the AI exemption?

19. Do you agree with retaining the AI exemption and the definition of "accredited investor" in their current form?

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Background

I frequently advise registered portfolio managers who create and use investment funds as a way to efficiently invest their clients' money. As market participants are aware, in issuing units of those funds to managed account clients, they are in the business of trading in securities. However, the exemption in section 8.6 of National Instrument 31-103 ('NI-31-103') recognizes that a registered adviser does not have to register as a dealer for a trade in a security of an investment fund if they act as the fund's adviser and investment fund manager, and distribute units of the fund only into their clients' managed accounts. However, notwithstanding this acknowledgment in NI 31-103 that this is a recognized normal investment practice of registered Portfolio Managers, this is not possible in Ontario due to the operation of the accredited investor definition which reads as follows:

"accredited investor" means

(q) a person acting on behalf of a fully managed account managed by that person, if that person
(i) is registered or authorized to carry on business as an adviser or the equivalent under the securities legislation of a jurisdiction of Canada or a foreign jurisdiction, and
(ii) in Ontario, is purchasing a security that is not a security of an investment fund,

As a result, I am frequently forced to be engaged in a disjointed and frustrating conversation with my client groups, an example of which follows. My submission is simply that I wish to not have to engage in this conversation in the future for my client groups that have Ontario clients.

The Typical 'you cannot invest in your own investment funds in Ontario' Conversation

Portfolio Manager ('PM'): So, we are going to set up an internal pool, managed the same way as our separately managed accounts ('SMA'), in publicly traded securities. We need to do this on a larger scale to more efficiently manage for a portion of our clients and to allow for our client's related accounts such as RESPs to be most effectively managed by us as well.

Trusted Counsel/Advisor ('TA'): That is great. We can get the internal pool set up and we will have obtain a client consent in advance of purchase and there will be some notice provisions to send to your regulator to advise them you are doing this. But then we are good to go.

PM: Sounds great. Do our clients have to sign subscriptions and such?

TA: No, they don't; you are the accredited adviser as the PM as the purchase is by you within their managed accounts.

PM: Wow, does this ever make sense.

TA: Quick question: do you have any Ontario clients?

PM: Why yes, we have some Ontario groups; we are registered as a PM there and this will be ideal for a number of them.

TA: Oh, well, there is a catch in that Ontario does not quite work the same as the rest of the country; in Ontario you cannot purchase units of your own investment fund within a managed account.

PM: Why is that; I have read NI 31-103 and I recall that I can advise in *any* security.

TA: You are correct, just not in Ontario.

PM: Why is that; I also understand from NI 31-103 that I have passed rigorous proficiency and experience requirements to advise in a discretionary manner.

TA: You are correct, just not in Ontario.

PM: So why is it then?

TA: A number of years back there was this hedge fund that blew up called Portus, and the OSC was concerned about this and then added this restriction. Now the whole Portus debacle sharpened everyone's pencils when it comes to Know Your Product obligations, which was needed; but this is still a lingering hangover, as it were.

PM: But I am just investing within this pool the way I invest all of my clients currently in their SMAs, and it will be invested in publicly traded securities; is this still an issue?

TA: Yes.

PM: so what can I do about this?

TA: Well, you could make what is called an exemption application to the OSC; you will pay between $10-20,000 in fees and costs, it is a lengthy process and there is no guarantee you will get the exemption at the end of the day.

PM: So, what you are saying is just don't bother doing this for my Ontario clients.

TA: That's probably your best bet.

Summary

I realize this comment letter is a bit obtuse, but this really IS the typical conversation respected industry people have to engage in on an everyday basis. This existing limitation in the definition of accredited investor is doing a dis-service to the clients' best interests to Ontario resident clients in the scenario I have described above. It needs to be amended.

Yours truly,

Don Campbell

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