

February 29, 2012

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

Gordon Smith
British Columbia Securities Commission
PO Box 10142, Pacific Centre
701 West Georgia Street
Vancouver, British Columbia
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M^e Anne-Marie Beaudoin
Corporate Secretary
Autorité des marchés financiers
800, square Victoria, 22^e étage
C.P. 246, Tour de la Bourse
Montreal, Quebec
H4Z 1G3

Dear Sirs/Mesdames:

Re: Request for Comments – Review of Minimum Amount and Accredited Investor Exemptions in National Instrument 45-106 *Prospectus and Registration Exemptions*

We are pleased to provide comments to the Canadian Securities Administrators in connection with your review of the \$150,000 minimum amount prospectus exemption (the "**minimum amount exemption**") and the accredited investor prospectus exemption (the "**AI exemption**") set out in National Instrument 45-106 *Prospectus and Registration Exemptions*.

We strongly support maintaining the current monetary thresholds for the AI exemption and support maintaining the \$150,000 monetary threshold associated with the minimum amount exemption. We submit that the current thresholds strike an appropriate balance between investor protection and fostering efficient capital markets.

The importance of the AI exemption in particular should not be underestimated. The AI exemption is vital to small and medium sized issuers, who frequently rely on that exemption for

access to private capital, which is essential to their development. In our experience, this is particularly true for startup issuers, including oil and gas exploration and development companies, oil and gas service companies and issuers engaged in the development of technology in Western Canada, and junior mining exploration companies and high-tech startups in Eastern Canada. We have acted for many such issuers who sourced the initial capital required to acquire assets and commence business through private placements undertaken in reliance upon the AI exemption. Many of those organizations have gone on to become significant contributors to the economy in Canada, particularly in Western Canada. A considerable number of those issuers have also generated significant returns for their investors. Alberta has an active accredited investor community; many of the members of that community have made significant returns in the oil and gas industry and are now providing seed capital to facilitate technology innovation, an area that has traditionally struggled to find funding in the early stages.

In addition, the Toronto Stock Exchange and TSX Venture Exchange have attracted significant interest from the international investment community, including foreign high net worth individuals, investment funds, international companies and state-owned entities, particularly in respect of oil and gas issuers and junior to intermediate mining companies developing mineral projects in Canada and around the world. For many of these issuers, private placements are a cost efficient (and preferred) means of raising funds. International investors frequently participate in these private placements under the AI exemption.

In our experience, the AI exemption is relied upon to a much greater extent than any other capital raising prospectus exemption. We are concerned that any material increase in the monetary thresholds associated with the AI exemption would restrict the availability of private financing and significantly impair the ability of small and medium sized issuers to raise capital, which would, in our view, have a detrimental effect on the broader economy.

Despite the absence of revisions to the monetary thresholds associated with the AI exemption since its introduction, we have experienced few problems or concerns relating to:

- i) a lack of sophistication of investors who acquire securities pursuant to the AI exemption;
- ii) the investor's lack of financial resources to obtain expert advice; or
- iii) abuse of the exemption by individuals or organizations that do not qualify as accredited investors.

At the current monetary thresholds, the AI exemption is available only to a very small segment of the Canadian population. In our experience, some of the highest quality investment opportunities exist in the exempt market. Even at current AI exemption thresholds, we often encounter individuals who feel aggrieved that they are barred from participating in such opportunities. While they may not satisfy the financial criteria that would enable them to be classified as accredited investors, these individuals are often highly sophisticated in the industry sector in which they wish to invest, and have the financial resources to obtain securities advice and withstand an investment loss.

As noted above, we support the minimum amount exemption at its current threshold of \$150,000. This exemption is less commonly used relative to the AI exemption, but it is a



valuable addition to the securities regime – among other things it has the benefit of involving a "bright line test." While issuers' use of the minimum amount exemption has declined significantly since the introduction of the AI exemption, we continue to encounter situations in which the minimum amount exemption is the only option available to facilitate a trade and, in such circumstances, issuers and investors are thankful for its availability.

We acknowledge that there are policy issues associated with the minimum amount exemption – in our experience, it is not a reliable proxy for sophistication or the ability to withstand an investment loss and it may occasionally result in investors devoting an amount to the purchase of securities in excess of the level at which they would otherwise participate. On balance, however, we have not witnessed significant and ongoing problems with the use of the minimum amount exemption that would, in our view, justify its elimination or a significant increase in the \$150,000 monetary threshold.

Please note that the following members of our Capital Markets and M&A Practice Group have participated in the preparation of this letter and may be contacted directly in the event you have any questions concerning our submissions:

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Yours very truly,

BENNETT JONES LLP

(signed) Nicholas P. Fader

Nicholas P. Fader

