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FROM Fraser Milner Casgrain LLP

DATE February 29, 2012

SUBJECT CSA Staff Consultation Note 45 – 401 (the "**Consultation Note**")
Review of Minimum Amount and Accredited Investor Exemptions

Introduction

We appreciate the opportunity to participate in the consultation process and hope that our input is helpful to your considerations.

Executive Summary

As discussed below in more detail, while we acknowledge the often competing policy objectives of investor protection and capital market efficiency, we are very concerned that imposing additional restrictions on the use of the current accredited investor ("**AI**") exemption will have a deleterious effect on capital formation for early stage companies, particularly those in the technology space. We believe that companies are increasingly being required to compete for resources, financial or otherwise, on a global basis and that it is very important, particularly in a North American context, that the regulatory environment in Canada not be seen to be more restrictive and less flexible than the regulatory environment in the United States.

We do not propose to comment on proposals to amend the minimum amount exemption.

We also suggest below that, not only should you not be further restricting available exemptions, but you should be considering adding further exemptions, such as those relating to “crowdfunding”, in order to assist early stage companies in raising capital.

Our Experience

We are a national law firm with active venture capital and technology practices in each of our six offices. Lawyers in our firm deal regularly with capital formation at all levels from initial formation, angel and seed funding, venture capital financing and public offerings. This is not the right forum to cite statistics prepared and circulated by the Canadian Venture Capital and Private Equity Association but it is clear in our experience that capital is increasingly difficult to attract for start ups. Where “Series A” rounds might have been fairly broadly available from Canadian venture capitalists and U.S. venture capitalists five to ten years ago, they are increasingly less common. As a result of the scarcity of “Series A” financing rounds, start ups are increasingly required to rely on angel or seed funding, which by definition require them to seek financing from multiple sources in order to raise the necessary funding to develop and market innovative products.

Responses to Consultation Questions

Minimum Amount Exemption

We do not disagree with the way the issues have been framed in the Consultation Note with respect to the minimum amount exemption but we do not propose to comment on such issues. We do not see the minimum amount exemption being used very often in our venture capital and technology practices and therefore it is less relevant in the start up area.

AI Exemption

We acknowledge the issues raised in the Consultation Note with respect to the AI exemption. As stated above in the “Executive Summary”, we believe it is very important that the AI exemption not be further restricted at this time.

We believe that the income and asset thresholds should not be changed and should not change regardless of the circumstances you raise in question 20 of the Consultation Note.

We advocate strongly that any changes to income and asset thresholds be made only in unison with any changes to the in the U.S. “accredited investor” exemption. Moreover, if a change is made to further restrict the AI exemption without a similar change being made in the U.S., we would be concerned that it would affect “angels” and “super angels” investing in Canadian start ups. If changes are made to increase the income and asset thresholds in both countries, we do believe that there would be a general adverse impact on start up fundraising. While we are not qualified to make a general statement, in our own experience, we have not seen that this exemption has been abused or that problems have resulted.

We do not believe that additional qualification criteria should be added for individual investors under the AI exemption as placing further criteria on investors or start ups would, we believe, adversely affect capital raising.

Furthermore, we strongly believe that individuals should continue to be able to acquire securities under the AI exemption. This is extremely important, particularly in the context of angel financing. We do not believe this should be impacted by the factors listed in question 25 of the Consultation Note.

We do not recommend that an investment limit be imposed on individuals relying on the AI exemption, primarily to ensure uniformity with the U.S. "*accredited investor*" rules. If a limit were to be imposed, it would presumably be tied to a percentage of the individual's income or net assets, depending on the relevant test. However, we believe that imposing such a limit would particularly adversely impact the angel market.

We do not believe that compliance with the qualification criteria under the AI exemption should be considered during the current review of the AI exemption. The logistical realities of providing a "*certification*" would, in all likelihood, be cumbersome. For example, a "*certifier*" might be required to review underlying financial statements and tax returns of the individual in order to satisfy himself that the qualification criteria are met. We do not believe this would be practical and would seriously impede the ability of an investor to rely on this exemption.

If the AI exemption is amended, we are concerned how any change to would be positioned in the overall regulatory framework. We are concerned that the message could be that Canada is becoming a more difficult jurisdiction in which to raise start up capital. Depending on how any changes are introduced, including possibly packaging such amendment with proposals that would allow for more innovative, start up friendly investing, such as "*crowdfunding*", discussed below, the negative impact on the perception of the Canadian regulatory environment could be somewhat mitigated.

In summary, we believe that the AI exemption works properly in its current form.

Other options - Crowdfunding

As you are no doubt aware, the U.S. Congress has recently introduced crowdfunding legislation, which has already been passed by the House of Representatives with very strong bipartisan support, but which will not become law until, among other things, a bill is passed by the U.S. Senate.

If the U.S. Senate in fact passes crowdfunding legislation, we feel that a similar expansion of exemptions in Canada would be necessary in order to "*level the playing field*" for Canadian issuers and to establish a framework so that participation by Canadian issuers and investors in crowdfunding platforms can be effectively regulated.

Crowdfunding legislation in Canada should mirror the proposed U.S. legislation. We anticipate that such legislation would include:

- a requirement to warn investors of the risks associated with an investment via crowdfunding,
- limits on the amount that can be raised by a company through crowdfunding,
- limits on the amount an individual can invest in any company through crowdfunding, and
- restrictions on the resale of securities purchased through crowdfunding.

We acknowledge that any proposed changes to Canadian securities law to permit crowdfunding will have to contain reasonable investor protection mechanisms in order to gain regulatory support here in Canada.

As noted above, we think it is important that Canada not be perceived by investors as lagging behind the U.S. in terms ability to finance start ups. We would, in fact, encourage securities administrators in Canada to get ahead of the U.S. in order to demonstrate Canada's support for innovation in the technology sector.

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We would be pleased to answer any questions you may have on our submission. You may contact Tom Houston at (613) 783-9611 (tom.houston@fmc-law.com), Andrea Johnson at (613) 783-9655 (andrea.johnson@fmc-law.com) or Lara Vos Smith at (613) 783-9654 (lara.vossmith@fmc-law.com).