

GARDINER ROBERTS

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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
Securities Commission
Securities Commission
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Yukon Territory
Superintendent of Securities, Nunavut

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-and-

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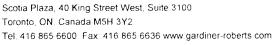
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Via E-mail

RE: CSA Staff Consultation Notice 45-401, Review of Minimum Amount and Accredited Investor Exemptions (the "Consultation Notice")









This submission is made on behalf of Gardiner Roberts LLP ("Gardiner Roberts") and William R. Johnstone, LLB in response to the request for comments published on November 10, 2011 (the "Request for Comments") with respect to the Consultation Notice.

I was a member of the original Ontario Securities Commission Small Business Advisory Committee. I have been involved as a lawyer, officer and director of junior public companies for over 25 years. Gardiner Roberts acts for many small cap public companies and private entities that rely upon the prospectus exemption regime in National Instrument 45-106 - *Prospectus and Registration Exemptions* ("NI 45-106") to raise capital.

General Observations

We support the initiatives of the Canadian Securities Administrators (the "CSA") in its attempts to address risks to investors in the capital markets and to ensure that any such initiatives are proportionate to the cost to industry and the restrictions such initiatives may impose on capital market participants. Given the current uncertainty in the world financial markets, the corollary effect this is having on the raising of capital in Canada and the size of issuers in the Canadian market, we are concerned that any changes made to NI 45-106 that narrows the available exemptions would make it more difficult for market participants to raise capital and for capital markets to function efficiently in the context of the investor protection mandate. We encourage the CSA to renew its efforts to harmonize the current exemptions that exist in NI 45-106, some of which contain some of the additional disclosure suggestions that have been referred to in the Consultation Notice, (e.g. s. 2.9 - the Offering Memorandum exemption and s. 5.2 the TSX Venture Exchange Offering).

We also encourage the CSA to continue to monitor compliance with the National Instrument 31-103 - Registration Requirements, Exemptions And Ongoing Registrant Obligations ("NI 31-103"), which incorporates the investor protection principles know-your-client, know-your-product and suitability analysis. We encourage the CSA to continue to harmonize the implementation of NI 31-103 so that it is applicable in all provinces and territories in Canada.

Comments On Proposed Changes To NI 45-106

Minimum Exemption Amount

We are of the view that changing the threshold amounts would unnecessarily restrict the ability of Canadian investors to participate in exempt market product offerings and that would unnecessarily reduce the ability of market participants to access capital. While we note that most investors that rely on this exemption are also "accredited investors", we are opposed to the elimination of this exemption as there are certain situations where this exemption is of use to facilitate financing of market participants.

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Accredited Investor ("AI") Exemption

We are of the view that the AI Exemption is an integral part of fundraising for issuers in the Canadian marketplace. It is our view that changing any threshold amounts in the AI Exemption would unnecessarily restrict the ability of Canadian investors from participating in exempt market product offerings and that would unnecessarily interfere with the ability of market participants to access capital. It is our view that the current thresholds are appropriate metrics for determining the suitability of an investor to subscribe for exempt market product offerings.

We agree that the additional categories suggested in the Consultation Notice that recognize investor sophistication based on: (i) investment experience; (ii) work experience; or (iii) education should be added as additional categories to the Al Exemption. We believe that investor sophistication has a much broader base than just wealth accumulation and that the addition of these categories to the Al Exemption would enhance the Al Exemption's functionality for both investors and for market participants. The suggested categories in the Consultation Notice should not be looked at as replacements for the current categories that are listed in the Al Exemption, but as a way to extend the Al Exemption.

Thank you for this opportunity to comment. If you have any questions, please contact me at 416-865-6605.

Yours truly,

GARDINER ROBERTS LLP

William R. Johnstone

Partner WRJ/hh

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