



Gordon Smith
British Columbia Securities Commission
PO Box 10142, Pacific Centre
701 West Georgia Street
Vancouver, British Columbia
V7Y 1L2
Fax: 604-899-6814
e-mail: gsmith@bcsc.bc.ca

c/o M^e Anne-Marie Beaudoin
Corporate Secretary
Autorité des marchés financiers
800, square Victoria, 22^e étage
C.P. 246, Tour de la Bourse
Montréal, Québec
H4Z 1G3
Fax : 514-864-6381
e-mail: consultation-en-cours@lautorite.qc.ca

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

MacNicol & Associates Asset Management Inc. is pleased to have the opportunity to submit the following comments regarding CSA Staff Consultation Note 45-401 Review of Minimum Amount and Accredited Investor Exemption. We also appreciate the opportunity that we had to meet directly with staff of the Ontario Securities Commission (OSC) during one of the scheduled sessions held at the offices in Toronto.

As background, MacNicol & Associates Asset Management Inc. is licensed as an ICPM, EMD and IFM. We have been in operation for almost 11 years in the Province of Ontario.

We would like to note our key recommendations:

1. Harmonize NI 45-106 to provide regulatory consistency across Canada
2. A registered portfolio manager (PM) acting on behalf of a fully managed account in Ontario should qualify as the accredited investor when purchasing securities of an investment fund;
3. For clients not dealing with a registered PM, maintain the status quo for AI exemption but add modifications to increase flexibility for investors using a PM;

General Comments

The regulatory regime in Canada was greatly enhanced with the implementation of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (NI 31-103). This has significantly improved investor protection and the regulatory oversight of our members. Registration reform also brought in enhanced proficiency requirements for all registrants and mandatory working capital and insurance requirements for registrant firms.

We believe that if the AI exemption is retained in its current form, it should at the very least, be harmonized across Canada and PMs in Ontario should qualify as the "accredited investor" for fully managed accounts for investments in investment funds such as pooled funds.

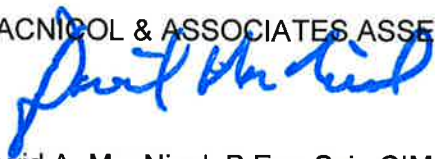
A key area for harmonization is the managed account exemption in Ontario. One of the classes of accredited investors in NI 45-106 is a registered adviser acting for a fully managed account (a discretionary account) in the account holder's jurisdiction. Under this exemption, the purchaser of the security (the account holder) doesn't need itself to be an accredited investor. The advisor is deemed to be the accredited investor. However, a portfolio manager acting on behalf of a fully managed account in Ontario is not an accredited investor when purchasing securities of an investment fund. Ontario has carved out this exemption when the exemption relates to securities of an investment fund such as a pooled fund. As such, a managed account in Ontario may only invest in an investment fund on an exempt basis where the holder of the account either personally qualifies as an "accredited investor" as defined in NI 45-106 or invests \$150,000 in the investment fund in accordance with the MA exemption in section 2.10 of NI 45-106.

This unharmonized section of the AI exemption makes it increasingly difficult for registered firms managing assets of clients located across different provinces, where in most parts of the country this is permissible. The practice of allowing investment managers to act as an accredited investor for their clients for investments in pooled funds should be consistent across Canada and it remains unclear as to why the OSC continues to have policy concerns. We recommend that Ontario re-evaluate this carve-out and review its current practice of screening the investor, particularly because the investor has actively hired a portfolio manager (who should qualify as the accredited investor). Like other provinces, PMs in Ontario have the proficiency, registration status and requirements, financial strength and human resources to support and properly service such accounts. We recommend that NI 45-106 be amended to allow fully managed accounts in Ontario to qualify as "accredited investors" for purchases of securities in investments funds such as pooled funds.

We continue to believe that in recognition of the relative sophistication of certain investors and their ability to withstand financial loss, securities laws should permit the sale of securities to accredited investors without a prospectus. We recognize the investor protection concerns described in the Consultation Note but feel that the current form of the exemption together with the protections afforded by the registration regime still adequately address these concerns.

Sincerely,

MACNICOL & ASSOCIATES ASSET MANAGEMENT INC.



David A. MacNicol B.Eng.Sci., CIM, FCSI
President, Portfolio Manager