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Mr. Gordon Smith
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February 29, 2012

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

Dear Staff of the Canadian Securities Administrators (CSA),

On behalf of the SVX, a strategic initiative of the MaRS Centre for Impact Investing (MCII), we appreciate the opportunity to provide our input to your consultation on the minimum amount and accredited investor exemptions. As a stakeholder in the Canadian capital markets seeking to operate in the exempt marketplace, we support your mandate of protecting investors from unfair, improper or fraudulent practices, and fostering fair and efficient capital markets, as well as confidence in those markets. Below we have provided a brief background on our initiative, offered recommendations related to the questions posed in your consultation document, and suggested an additional future consultation in line with your mandate, the mandate of this review and our objectives at the SVX.

BACKGROUND

The SVX is being developed as an online, private-access platform that will provide qualified organizations and businesses that have a strong social and/or environmental mission the opportunity to connect with qualified, accredited investors that wish to invest capital for both positive impact and the potential for a financial return. This investment approach is known as impact investing. The SVX is being developed by MCII with the support of major local and global foundations, and the Government of Ontario. Torys LLP, and KPMG are also supporting the SVX's development. Currently under review by the Ontario Securities Commission (OSC), the SVX platform will launch after the receipt of necessary regulatory approvals or exemptions from the OSC. The SVX desires to build trust and confidence in the emerging impact investing market and to ensure appropriate investor protection and awareness of risk, while enabling better access to capital for organizations and businesses working to solve our most pressing societal and environmental challenges.

RECOMMENDATIONS

Given our goals, we are in favour of requirements that increase transparency, awareness of risk, and the availability of information in the exempt marketplace. However, we believe that the exempt marketplace will be ill served by requirements that are likely to limit participation by investors who clearly have the financial resources to withstand loss or obtain expert advice in relation to an exempt investment.

As such, we offer the following recommendations to your consultation:

1. Eliminate the minimum amount exemption.

We believe that the minimum amount exemption, for issues similar to those cited by the CSA, does not adequately protect investors, and should be repealed. The investment of a minimum amount into the securities of an exempt issuer does not in itself guarantee investor sophistication, nor does it ensure the protection of investors from fraudulent issuers. At present, any individual with liquid assets of $150,000 could place all of their available capital (which could include education or retirement savings) into a single investment without the added protections afforded by non-exempt offerings. The minimum investment requirement may result in an investor investing more money than is warranted in the securities of an exempt issuer, thereby increasing an investor's exposure to potentially riskier securities. An investment requirement greater than the current minimum threshold, especially when adjusted for inflation, is likely to exacerbate the issue. While there may be concerns that the elimination of the minimum amount exemption may expose a greater number of unsophisticated investors, based on financial resources and/or investment expertise, to potential risks in the exempt market, we believe that the utilization of the AI exemption as described below is sufficient for addressing these concerns.

2. Retain the accredited investor (AI) exemption, with options for greater registrant engagement and risk disclosures.

We believe that the AI exemption should be retained, and that the definition of an "accredited investor" should be maintained in its current form, including current income and asset thresholds. Given slower economic activity in the wake of the global financial crisis, indexing income and asset thresholds to inflation will limit the availability of capital to private businesses utilizing the AI exemption to raise capital, further limiting economic growth. The inclusion of additional qualifying criteria such as investment portfolio size, work experience, and/or education to the AI definition, while beneficial, will similarly limit the participation of investors in exempt securities, and as such should not be mandatory or required as part of the AI exemption.

Either of the above scenarios, namely inflation-adjustment and investment knowledge requirements, will result in additional challenges for local, small- and medium-sized organizations and businesses looking to attract impact investments. Although institutional investors represent a large proportion of those currently making impact investments, it is important to enable greater participation by high net worth individuals (HNWIs) in the exempt market, within an environment that appropriately recognizes risk and provides necessary information for investment decision-making. A 2010 study by Hope Consulting in the United States reported a $120 billion market opportunity for HNWI engagement in impact investments over the next decade (http://www.hopeconsulting.us/money-for-good/). This represents a significant potential for unlocking private capital for public good.

However, we need to balance investor protection with capital formation, particularly as it relates to concerns around greater participation by unsophisticated investors in the exempt market under current AI exemption thresholds and concerns that issuers are not taking adequate steps to ensure that an investor in fact meets the applicable thresholds. As such, we recommend requirements that issuers (or registrants acting on their behalf) be required to act diligently in confirming that an investor does in fact meet the AI threshold, and be required to warn investors as to the possible risks associated with exempt market investments. We believe this will enhance investor protection without limiting the ability of businesses to raise investment capital. We also believe that disclosure of risk factors is a good practice and one that should be encouraged.

SUGGESTIONS FOR ADDITIONAL CONSULTATION

The purpose of your review, and the questions posed in your consultation document are very much in line with issues arising in the nascent impact investing marketplace, including the question of greater democratization of access to capital for small- and medium-sized organizations and businesses, as well as questions posed by potential issuers and investors that we seek to work with at the SVX. We have highlighted some of these issues and questions below:

- **Currently in the United States, regulators are considering better access to financing for small- and medium-sized businesses through crowdfunding, with new exemptions being proposed for investors, issuers, and intermediaries connecting the two.** The US House of Representatives and Senate are currently considering three crowdfunding bills, including HR-2930, also known as the "Entrepreneur Access to Capital Act" or The House Bill, which was promptly passed by the House in November, 2011. In essence, the bills propose the creation of exemptions for retail investors with a maximum threshold for investment and a maximum threshold for raising capital by issuers from retail investors. In the case of The House Bill, individual investors can make investments equal to the lesser of $10,000 or 10 per cent of the investor's annual income via online intermediary platforms. In addition, businesses may raise investments of up to $1 million without financial statements, and up to $2 million with audited financial statements. The intermediary, business and investor need to meet comprehensive requirements, as outlined in the bill, including appropriate disclosures, statements of risk, and offering criteria (please visit http://thomas.loc.gov/cgi-bin/bdquery/z?d112:h.r.2930: for full text on The House Bill). If passed, the bill (or bills) would provide a competitive advantage to small businesses in the United States by enabling greater access to capital, and ultimately, positive impact and economic growth.
- **There is significant retail investor interest to provide financing to local organizations and businesses, particularly those driving local social and environmental impact.** Our platform focuses on accredited investors, given the current regulatory framework and the potential availability of capital from these sources. However, we have fielded significant interest from individual, retail investors, who may not necessarily meet the criteria for an accredited investor, in financing local impact. Many stakeholders, local and global, in the emerging impact investing marketplace have reported similar interest from such individual, retail investors.
- **There are an increasing number of organizations and businesses building market-based models to tackle social and environmental problems and turning to investors for financing.** We are acutely aware of the large number of such organizations and businesses in Ontario. However, the relatively high cost of capital and the lack of access to capital are significant barriers to their ability to grow and advance their mission.

As such, we believe the CSA should also undertake a review of the evolving regulations around retail investing and crowdfunding that would both foster investor protection and address some of the issues outlined above. Accordingly, we recommend that the CSA engage in consultations in the near future to explore the potential for enabling greater participation by retail investors and small and medium-sized organizations and businesses in the Canadian capital markets, with particular focus on:

- Identifying current circumstances and barriers for small-scale investors and issuers;
- Examining maximum thresholds for investment and the issuance of securities;
- Examining the potential role of online intermediaries in a retail exempt market;
- Reviewing the potential risks to investors and issuers, and the potential benefits of regulatory change; and
- Studying similar considerations, regulations and exemptions in other jurisdictions.

As with the current consultation, the proposed consultation, and any opinion thereof, would have to ensure that investors, particularly retail investors, are adequately protected, while simultaneously undertaking the democratization of access to capital for local small- and medium-sized organizations and businesses that are often the strongest engines for local, economic growth.

We applaud the CSA's efforts on its current review of the minimum amount exemption and the AI exemption, and for consulting with appropriate stakeholders and the public in this process. We look forward to the results from this consultation, and to future engagements.

If you have any questions regarding our submission, please contact Annie Malhotra via phone at 416-673-8186 or via email at amalhotra@marsdd.com.

Sincerely,

Annie Malhotra & Adam Spence
SVX, MaRS Centre for Impact Investing

Note: The opinions expressed in this letter solely reflect those of the authors and the SVX initiative. The opinions expressed in this letter do not reflect those of the funders, collaborators, or partners of the SVX, including those of the Board of Directors of the MaRS Discovery District, or the Corporation.