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VIA E-MAIL

British Columbia Securities Commission
Alberta Securities Commission
Saskatchewan Financial Services Commission
Manitoba 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

c/o

Gordon Smith
British Columbia Securities Commission
PO Box 10142, Pacific Centre
701 West Georgia Street
Vancouver, British Columbia
V7Y 1L2

gsmith@bcsc.bc.ca

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

consultation-en-cours@lautorite.gc.ca

Dear Sirs/Mesdames:

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

This letter is provided in response to the Canadian Securities Administrators ("CSA") Staff Consultation Note 45-101, *Review of Minimum Amount and Accredited Investor Exemptions*, dated November 10, 2011 (the "CSA Note").

We are lawyers practicing in Nova Scotia, New Brunswick, Prince Edward Island and Newfoundland and Labrador and are pleased to respond to the CSA Note in which the CSA

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invited interested parties to submit comments relating to the review of the Minimum Amount and Accredited Investor Prospectus Exemptions.

Minimum Amount Exemption

In our view, the Minimum Amount Exemption ("MAE") provided for in Section 2.10 of National Instrument 45-106, *Prospectus and Registration Exemptions* ("NI 45-106") should be maintained and the current minimum amount threshold of \$150,000 should not be increased.

We are not opposed to periodic reviews and adjustments to the minimum amount threshold; however, at this time, we do not believe the amount should be raised. Atlantic Canadian businesses frequently identify lack of access to capital as a barrier to growth. In our view, if the minimum amount threshold is raised, the effect of this measure would be to limit even further the access to capital in this region.

In our experience, an investor who has \$150,000 to invest is likely an accredited investor, as defined in Section 1.1 of NI 45-106. The MAE provides a means by which an accredited investor may invest without having to go through the steps of demonstrating that he or she is an accredited investor or of providing a certificate indicating that he or she is an accredited investor. Therefore the minimum amount exemption can save time and money, potentially encouraging investment.

We would not support amendments to the MAE which would impose further restrictions or disclosure obligations on those investors who wish to invest using the MAE exemption. For example, in the United States, the minimum amount threshold is the same as in Canada, \$150,000, but the amount must comprise a certain percentage of the investor's net worth. We would not support such an amendment in Canada as it would likely require another form of certification that the amount to be invested constitutes a certain percentage of the person's net worth, thus hindering the process.

We are not opposed to offering alternative criteria to the minimum amount exemption for individuals, such as having a registrant involved in the distribution or providing risk factor disclosure, as suggested at point 9 on page 4 of the CSA Note. However, in our view, these should be offered as alternatives and not displace the exemption in its current form.

In conclusion, our view is that the MAE should be maintained, with no increase to the minimum amount threshold.

Accredited Investor Exemption

In our view, the Accredited Investor Exemption ("AIE") provided for in Section 2.3 of NI 45-106 should be maintained in its current form, with a modification suggested below. We do not believe the income and asset thresholds for individuals should be raised at this time or indexed to inflation. As with the minimum amount exemption, we believe that periodic reviews of the AIE would be beneficial.

In our experience, the AIE is widely used for capital raising, particularly by small and medium sized enterprises. Any significant increase in the thresholds could limit the ability of these enterprises to raise capital.

We do support the use of alternative criteria for individual investors in order to gain access to the AIE, such as the criteria set out at point (c) on page 6 of the CSA Note. In particular, we believe that individuals who can be classified as "finance professionals" or who have taken a course in investment principles should qualify as accredited investors in the same way that registrants have their own category under the definition of Accredited Investor in NI 45-106.

We do not agree with the suggestion at point (f) on page 7 that an investor's accredited investor status be certified by an independent third party such as a lawyer or qualified accountant. Firstly, we do not believe this would lead to increased compliance, as any opinion provided by a lawyer or accountant would be based on information provided to them by the investor, and therefore would have to be qualified in that regard and would not provide more certainty that the Accredited Investor status has been met by their client. Secondly, adding an additional certification would add both time and cost to the process which could deter potential investors.

The guidelines set out by the Ontario Securities Commission ("OSC") in OSC Staff Notice 33-735, *Sale of Exempt Securities to Non-Accredited Investors*, provides a useful list of steps which should be taken by dealers to ensure that an investor meets the definition of an accredited investor. For brokered private placements, we believe that dealers and brokers are in the best position to determine whether an investor meets the criteria for an accredited investor and that if the steps recommended by the OSC are followed, a certification by an independent third party would not be required.

With respect to non-brokered private placements where there is no licensed professional advising either the issuer or the investor, the proper allocation of risk is less clear. On balance, however, we believe that the investor is best situated to provide confirmation of his or her qualifications as an accredited investor.

Our view is that the AIE is critical to capital raising in Canada and particularly in Atlantic Canada. It is important to maintain this exemption in addition to the minimum amount exemption because it allows individuals who meet the threshold to make investments smaller than \$150,000, thus reducing the likelihood that an investor will invest more than business or investment considerations may dictate solely to meet the minimum amount threshold.

In conclusion, we believe that the AIE should be maintained in its current form, with no increase to the income or asset thresholds. We would, however, recommend that an additional category for "finance professionals" be added to the definition of accredited investor in order to permit those persons to invest who have a degree of financial acumen, but not necessarily the income or net worth set out in the AIE.

Conclusion

We recommend that both the MAE and the AIE be maintained, with no increases to the applicable thresholds at this time as set out above. While the criteria for the exemptions cannot assure investor sophistication, requiring a certain level of income or wealth does permit the assumption that an investor either has the requisite knowledge of investments, has the resources to obtain necessary advice, or can afford to take the risk related to their investment. By combining the current criteria with further alternatives to account for individuals with education and/or experience in finance and investments, these exemptions will continue to encourage investment while protecting investors.

Thank you for the opportunity to provide our comments on the MAE and AIE. Please feel free to contact Basia Dzierzanowska at basia.dzierzanowska@mcinnescooper.com or Jeffrey Hoyt at jeffrey.hoyt@mcinnescooper.com, both partners in our Corporate Finance Group, for further elaboration of our comments.

Yours very truly,

MCINNES COOPER

