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Ontario Securities Commission
c/o Gordon Smith
British Columbia Securities Commission
PO Box 10142, Pacific Centre
701 West Georgia Street
Vancouver, British Columbia
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Dear Mr. Smith,

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

Tacita Capital Inc. is a portfolio manager registered in Alberta, British Columbia, Ontario and Quebec serving the wealth and investment management needs of affluent Canadians. We would like to thank you for the opportunity to comment on the minimum amount and accredited investor exemptions.

Our specific comments are as follows:

I. The Rationale for Exemptions from Prospectus Requirements.

We believe that Canadians are best served by capital markets that allocate capital efficiently and effectively in a competitive market; allow for the constant innovation and improvement of financial products; provide the widest possible investment opportunity set for investors to diversify their portfolios in a manner consistent with their needs and circumstances; require stringent educational, experiential and professional standards for industry participants; and provide reasonable safeguards to investors, particularly in respect of “know your client”, “suitability of investment,” “know your product” and clear disclosure standards.

The continued availability of the minimum amount and accredited investor exemptions are vitally important in fulfilling the first three criteria. In particular, we would like to note the following:

- a) The cost and time associated with filing and clearing a prospectus as well as meeting ongoing reporting requirements is prohibitive for small security offerings and small pooled funds which consequently rely on the minimum amount and accredited investor exemptions. The curtailment of these exemptions will either eliminate certain investment options or increase their costs to investors.
- b) The Canadian investment industry is dominated by a handful of major firms whose size and national distribution capabilities are competitively advantaged by the scale required for prospectus approved securities. In contrast, the availability of exemptions has created an “exempt” market where smaller firms can effectively compete to meet the investment needs of different segments of the retail and institutional markets. Historically, some of these firms have grown over time to compete with larger firms, ultimately for the betterment of our capital markets. The curtailment of exemptions could materially impair the future competitiveness of our capital markets.
- c) Many of these same larger firms also dominate both the manufacturing and distribution of mutual fund and pooled funds across Canada. The products of smaller investment firms are routinely denied access to the larger firms’ selling networks. Fortunately, in the past several years, there has been a dramatic increase in the number of exempt pooled funds managed by smaller firms that are available on FundSERV that are efficiently accessed by other small securities dealers and portfolio management firms. This has increased the range of choice for many investors and fostered more competition in the fund industry - a positive trend that would be reversed by a curtailment in exemptions.
- d) Along with the increase in the number of pooled funds available, there has been a dramatic expansion in the range of sub-asset classes (e.g. mortgages, private equity) and investment strategies (e.g. equity long/short, convertible arbitrage) available for investment. Many of these products, long used by larger institutions, allow investors (or advisors and portfolio managers on their behalf) to enhance the diversification and risk management of their portfolios. The curtailment of exemptions would likely impair the development of better portfolio management tools for individual investors.

Overall, we believe that the capital markets are best served by the existing minimum amount and accredited investor exemptions or even a further liberalization of them with the important caveat that the minimum amount exemption be coupled with proper disclosure requirements and the involvement of registrants responsible for “know your client” and “suitability of investment” standards.

II. Response to Specific Consultation Questions

Our responses to specific consultation questions are as follows:

- 1. What is the appropriate basis for the minimum amount exemption and the AI exemption?*

The financial tests currently set out for the accredited investor exemption already restrict availability to a very small percentage of Canadian public. According to the Canada Revenue Agency's recent release of interim income statistics for the 2009 tax year, there were only 507,000 individuals with incomes in excess of \$150,000, constituting only 2.1% of tax filers. Of these, only 173,000 individuals or 0.7% of tax filers had incomes in excess of \$250,000. Hence, the \$200,000 minimum income over a two year period with a similar expectation for the current year likely restricts accreditation to approximately 1.0% to 1.5% of tax filers.

The minimum financial asset test of \$1,000,000 also applies to very small number of Canadians. The 2011 Capgemini Merrill Lynch World Wealth Report estimated that there were 282,300 Canadian households with \$1,000,000 or more of financial assets in 2010. This comprises approximately 2.3% of the 12.4 million households in Canada (as per the 2006 census).

In our experience, the individuals that qualify under the AI financial tests are overwhelmingly sophisticated professionals, corporate executives and business owners who are capable of making thoughtful investment decisions. Most are experienced investors and many also have access to a network of professional advisors to assist them in their decision-making. Only a very small proportion would we consider inexperienced and, in these instances, the investor is typically sophisticated enough to be aware of his or her limitations and either restricts their investing to GIC's and the like or delegates his or her investment decision-making to a discretionary portfolio manager.

The financial tests currently in place for the accredited investor exemption limit exempt product access to a very small proportion of investors and in our opinion, act as good proxy for the level of sophistication and are highly correlated with other tests such as education, investment experience and the ability to take a loss.

The minimum amount exemption, although not as an effective indicator of "sophistication" as the financial tests of the accredited investor exemption, does act in our opinion as a substantial barrier to investment by "non-sophisticated" retail investors. The dollar amount involved with a \$150,000 threshold is material and thereby effectively excludes investment by most Canadians. According to Statistics Canada, the median net worth of Canadian households in 2005 was only \$166,000 - approximately the same level as the exemption.

In our experience, the minimum amount exemption does allow access to exempt products by "sophisticated investors" who do not qualify as accredited investors. Frequently, they are younger and are in the process of building both their careers and portfolios. In fact,

eliminating only the minimum amount exemption, in some respects, discriminates against younger, “sophisticated” investors.

2. Does the involvement in the distribution of a registrant who has an obligation to recommend only suitable investments to the purchaser address any concerns?

In the case of the minimum investment exemption, the involvement of a registrant who has an obligation to recommend only suitable investments should mitigate concerns that the \$150,000 threshold may cause an investor to invest more than investment considerations would dictate as the registrant would be responsible for considering the quantum of the investment as a key criterion of suitability. It should similarly mitigate concerns of product novelty and complexity or investor “non-sophistication” as these are also suitability parameters.

5. Do you agree with maintaining the minimum amount exemption in its current form?

We would maintain the minimum amount exemption at its current dollar amount but couple its use with the requirement that either a registrant who has an obligation to recommend only suitable investments to the purchaser or a portfolio manager be involved when it is used in respect of a distribution to individual investors.

6. How much should the minimum investment threshold be increased? Would your answer to this question change depending on whether:

- any disclosure is provided to investors, including risk factor disclosure?*
- the purchaser is an individual, instead of an institutional investor?*
- the security is novel or complex?*
- the issuer of the security is a reporting issuer?*
- a registrant is involved in the distribution who has an obligation to recommend only suitable investments to the purchaser?*

We would recommend that the minimum investment threshold not be increased; this will only increase concerns about concentration risk in a specific investment distributed under this exemption. Instead, disclosure to investors, including risk factors, coupled with the involvement of a registrant as recommended above should remedy possible weaknesses of this particular exemption.

7. Should the \$150,000 threshold be periodically indexed to inflation?

This is a sound recommendation if it is published annually (rounded off to the nearest \$1000) and eliminates the continual revisiting of the issue by the regulators. Many industry

participants undoubtedly find it difficult to plan strategically when exemption limits are continually revisited and/or changed.

9. Should individuals be able to acquire securities under the minimum amount exemption?

Yes, but as mentioned above, we would couple it with the requirements of disclosure to investors, including risk factors, and the involvement of a registrant who has an obligation to recommend only suitable investments to the purchaser or a portfolio manager.

14. Should the minimum amount exemption be repealed?

No, in our opinion, it provides a means for sophisticated investors who are not accredited investors to participate in the exempt market. Concerns with this exemption are best dealt with through disclosure and registrant involvement.

18. Are there any other issues you may have with the AI exemption?

We believe the accredited investor exemption should be amended to explicitly add spousal trusts to the spousal provisions.

Additionally, we believe portfolio managers are in an excellent position to assess the investment needs of their clients, particularly in light of the fiduciary standards to which they must adhere. By assessing suitability under discretionary authority, a portfolio manager is able to provide advice in respect of any security for a client. However the limitations contained under the portfolio manager fully managed account definition which do not allow the purchase of pooled funds in Ontario within a managed account for certain clients unnecessarily restricts portfolio managers in their ability to manage these portfolios as effectively as those of other clients from both a diversification and cost perspective. Not all clients of a portfolio manager are accredited investors (i.e. trusts, children, spouses, siblings and generally clients who do not meet the asset and income thresholds) yet they should have substantially the same opportunity for diversified, cost-effective portfolio construction as accredited clients.

The securities regulators have been highly effective in ensuring that the proficiency and experience requirements of portfolio managers meet a very high standard, both on an absolute and relative (i.e. compared to the US) basis. We believe that in appropriate circumstances, where suitable to a client and where the relationship disclosure requirements for portfolio managers have been met, it is in the clients' best interests to have the portfolio manager advise in pooled funds within a managed account for all of their clients.

19. Do you agree with retaining the AI exemption and the definition of “accredited investor” in their current form?

It should be retained in its current form for reasons previously cited with: a) the addition of “spousal trust” to the spousal provisions and b) the ability of fully managed accounts in Ontario to qualify as “accredited Investors”.

21. Should the income and asset thresholds be periodically indexed to inflation?

This is a sound recommendation if it is published annually (rounded off to the nearest \$1000) and eliminates the continual revisiting of the issue by the regulators. As mentioned, it is very difficult for many industry participants to plan strategically and commit capital and time to the exempt market if its parameters and/or existence are constantly in question.

22. If we changed the income and asset thresholds, what would the impact be on capital raising?

We believe that any substantial increase in income and asset thresholds would dramatically reduce an already limited exempt market and substantially impair the growth in the pooled funds market in Canada. This will reduce the opportunity set of investments for sophisticated investors, decrease the portfolio management vehicles available to improve diversification, stifle innovation and impair competition in an already oligopolistic industry.

23. What qualification criteria should be used in the AI exemption for individual investors?

For reasons previously cited, the current income and asset tests act as excellent indicators of “sophistication”. Limiting the market based on work experience in the investment industry is tantamount to eliminating the exemption. Limiting the exemption based on industry qualification or advanced degrees in business is either unduly restrictive and/or no guarantee of “sophistication”.

25. Should individuals be able to acquire securities under the AI exemption?

Yes, the current income and asset thresholds restrict this exemption to a very small percentage of the investing public.

26. Should an investment limit be imposed on accredited investors who are individuals?

No, there is such a diversity of products with varying risk characteristics available in the exempt market that this would impose an arbitrary restriction on investors or portfolio managers acting on their behalf with no offsetting benefit. For example, there is a material difference in the risk of a broadly diversified pooled fund compared to that of a speculative start-up but a single investment limit would treat them as identical. In fact, an investment limit could deny investors' access to a wide range of investment strategies that they or their portfolio managers might deploy that would improve their portfolio construction from both a risk and tax management perspective.

If there are concerns with the AI exemption in respect of specific types of offerings, then requiring either the involvement of a registrant who has an obligation to recommend only suitable investments to the purchaser or a portfolio manager is the best remedy.

28. Should <requiring an investor's accredited investor status to be certified by an independent third party, such as a lawyer or qualified accountant> be considered in a review of the AI exemption?

No. Many accredited investors, particularly corporate executives, do not have legal and accounting relationships so the cost of establishing a relationship, providing evidence of income and assets and obtaining a certification will not be trivial. Even those who have relationships will be forced to provide financial disclosures and incur costs that they would rather not.

29. Do you agree with imposing such a requirement?

No. The cost, time and administrative burden associated with this requirement far outweighs the benefit of precluding an investor who misrepresents himself or herself as eligible for the AI exemption from participating in the exempt market.

30. Are there alternatives that we should consider?

The current written acknowledgement used by most firms signed by an investor that he or she qualifies for a specific exemption criterion is adequate.

We would like to thank you for the opportunity to make this submission.

Yours truly,

Michael Nairne, CFP, CFA

President and Chief Investment Officer