MILLER THOMSON LLP
MILLERTHOMSON.COM

700 9TH AVENUE SOUTHWEST, SUITE 3000
CALGARY, AB + T2P 3V4 + CANADA

T 403.298.2400
F 403.262.0007

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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 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
Fax: 604-899-6814
e-mail 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
Fax: 514-864-6381
e-mail: consultation-en-cours@lautorite.qc.ca

Dear Sirs and Madams:

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

We'd like to thank you for taking the time to read our letter and all other submitted letters. We appreciate the CSA taking the time to consult with industry and are hopeful that they will give due consideration to all received comments and make the appropriate changes.

The following letter expresses the view of the writers and does not represent the view of the firm of Miller Thomson LLP. Other lawyers within the firm will be providing their own letters to CSA, which views may differ somewhat from the letter below.

Consultation questions

1. What is the appropriate basis for the minimum amount ("MA") exemption and the accredited investor ("AI") exemption?

Based upon our experience with our clients, there is not a direct correlation between adequate investor sophistication and a minimum amount of funds that the client has available for a particular transaction. Also, based upon our experience with clients, an individual's net worth and/or annual income (i.e., financial resources) does not automatically mean that that particular client is a sophisticated investor. Accordingly, we agree that the MA exemption is problematic for the reasons set out by the CSA: there is no assurance of inventor sophistication based solely on the fact that the investor has $150,000 to invest.

Notwithstanding the foregoing paragraph, financial resources may provide the ability to obtain "expert" advice; we disagree with the notion that an exemption should be made available solely on the premise that such advice is attainable. We believe that regardless of the exemption being relied upon, a minimum amount of information should be presented to prospective investors. For this reason we recommend that a minimal amount of access to financial and other key information about an issuer should be available. Such is the case with the offering memorandum ("OM") exemption.

We feel that a certain level of educational background, (for example for those with professional designations including, without limitation, LLB, CA, CMA, CFA, CFP) would be an appropriate basis for an exemption. Also, work experience may also be sufficient grounds for an exemption if a potential investor in question works in an appropriate position in the financial sector.

It is our respective opinion that there should be a correlation between financial resources and the amount one is able to invest but we do not feel that financial resources alone should be a basis for an exemption, particularly one that does not provide any requirement for disclosure by an issuer. However, on the other hand, over disclosure with no explanation of the document or the transaction often equates to no disclosure at all. This is the common problem with providing clients with way to much information and not taking the time to review the documentation clause by clause with the client. This is often the case with those who are provided a prospectus. Based on our experience we are of the opinion that the inordinate amount of disclosure provided by a prospectus does not necessarily benefits investors if it is too overwhelming. Prospectuses and the financial statements relating to public companies are effectively too complicated and too lengthy for average investors to understand. Given the

overwhelming volume and complexity of information, investors often forego reading the disclosure materials provided. We feel that the Western Jurisdictions have it right with the amount of discourse that is required in an OM.

We feel that the amount of disclosure being provided to investors needs to be completely re-analyzed with a sufficient amount of disclosure being provided to all investors as opposed to copious amounts being provided to "unsophisticated' investors and none being offered to those that are "sophisticated".

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?

Yes. While we realize the value of exemptions available to those outside the world of registrants (when properly utilized), the treatment of transactions where there is/isn't a registrant involved should be entirely different.

Having a registrant involved generally ensures the best interests of investors being served by "'know your client", "know your product" and suitability advice being in place. When consistently and properly applied these Items should alleviate some if not all concerns. Exempt market trades involving a registrant should be treated with the same respect and trust as those that occur in the public markets which was one of the major point of National Instrument 31-103 ("NI 31-103").

3. Do you have comments on the issues described above?

As referenced above in our response to Question 1, we generally agree that no specific amount of money necessarily equates to “sophistication”. As stated above, an appropriate amount of disclosure on a given issuer should be made available for each purchaser regardless of the amount of money being invested.

We agree that the MA exemption often causes the unintended consequence of investors subscribing for more than is prudent, as they try to reach the $150,000 threshold. This unintended consequence of the MA exemption encourages investors to rely heavily upon one investment rather then diversifying their investments. Again we point to the advisability of the OM exemption as it allows investors to purchase an amount of securities that is more suited to their comfort level and given circumstances. It does not force them into overextending themselves into one investment so that they can qualify. In those jurisdictions where the OM exemption isn't available it is inevitable that many investors are compelled into investing $150,000 or they do not qualify and they might miss out on an investment opportunity that they want to participate in. If this exemption remains and the MA amount is increased to the amount that is currently suggested, this will simply compound the problem.

While we acknowledge the MA exemption is not widely used by issuers, we feel that it should still be repealed as there are alternate exemptions available and the goal of investor protection must be as important a consideration as the ease of capital access for issuers.

It is our opinion that all investors should have the right to participate in the exempt market and entrepreneurs should have the right to utilize the exempt market industry to build and develop their businesses. All investors should have easy access to investments where they have the opportunity to make informed investment decisions. With the involvement of a registrant and the providing of the required disclosure based on the exemption in question, we are unclear as to how participation in the exempt market differs from traditional investing? Since implementation of NI 31-103, the two primary concerns that securities regulators should have with regards to all investments are now addressed: those concerns being proper disclosure and suitability.

The public markets rarely afford investors the same opportunities that the exempt market industry can provide and they provide disclosure at an excessive level to "unsophisticated" investors who invest via prospectus. Most importantly, public markets lack rules that prevent an individual from following rumours or "stock tips" without an advisor involved and therefore no suitability advice provided.

4. Are there other issues you may have with the MA exemption?

No.

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

No.

6. How much should the MI threshold be increased?

As mentioned above, this exemption should be repealed as opposed to adjusted. If it continues as an exemption, then we answer as below.

Would your answer to this question change depending on whether:

(a) Any disclosure is provided to investors, including risk factor disclosure?

If disclosure is going to be provided, we would suggest that a different exemption be relied upon, that being the AI or OM exemption. As a result, we suggest that the Ontario Securities Commission and Securities Commission of Newfoundland and Labrador adopt the OM exemption as have the other jurisdictions in Canada. This would be beneficial to harmonize the securities rules across Canada.

(b) The purchaser is an individual, instead of an institutional investor?

It is our experience that individuals need a greater level of protect over and institutional investor.

(c) The security is novel or complex?

Securities regulation should have general application and should not be security specific. We are of the belief that tailoring different rules to different

securities based on complexity would be extremely cumbersome to establish regulations for in the first place as complexity is relative to the given investor.

(d) The issuer of the security is a reporting issuer?

No, this would not affect our answer.

(e) A registrant is involved in the distribution who has an obligation to recommend only suitable investments to the purchaser?

See our answer to Question 2 above.

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

While we feel this exemption should be repealed, we do agree that all exemptions should be periodically reviewed to ensure the underlying assumptions on which they are based are still correct. However, more than just inflation should be considered when looking to adjust exemptions. An overall analysis should be done including assessing current market conditions and accessibility to capital for issuers of all sizes.

While we understand that these numbers have not been adjusted in thirty years (since being adopted by the Securities and Exchange Commission in 1982), we feel that suddenly adjusting any number to 3 decades worth of inflation will have a detrimental impact on the capital markets. It's too drastic. Accordingly, we submit that exemptions should be reviewed once every five years. We further submit that the current thresholds under the existing exemptions are sufficient today and were set too high when implemented.

8. If we changed the $150,000 threshold what would the impact be on capital raising?

From our involvement with current clients that are raising funds, there will likely be a minimal impact on capital raising if the $150,000 threshold is increased, as this exemption is very seldom relied upon. Most investors that have $150,000 to invest in a single issuer may fall into the AI category. However, there is the concern that individual investor has $150,000 in their RRSP's, RIF's, etc. that they use for the investment or they are able to borrow against the equity in their primary residence to reach the $150,000 investment threshold. These investors should be protected.

However, if the AI thresholds were increased as well, there would be a significantly detrimental impact on capital rising, particularly in the provinces that do not have the OM exemption.

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

No. It should be repealed entirely.

Would your answer to this question change depending on whether:

(a) Any disclosure is provided to investors, including risk factor disclosure?

No, this would not affect our answer.

(b) The security is novel or complex?

No, this would not affect our answer.

(c) The issuer of the security is a reporting issuer?

No, this would not affect our answer.

(d) A registrant is involved in the distribution who has an obligation to recommend only suitable investments to the purchaser?

No, this would not affect our answer.

10. If individuals are able to acquire securities under the MA exemption, should there be any limitations?

No. Should this exemption remain, individuals should have the same criteria as do institutions as we would expect a person to be more diligent with their own finances than an institution.

11. If we limited the use of the exemption to persons who are not individuals, what would the impact be on capital raising?

Were you to do this, you would be disallowing individuals in jurisdictions with the absence of other suitable exemptions the ability to participate in the exempt market with their RSPs. This would cause a material adverse impact on capital raising given the size of the RRSP pool in Canada.

12. Are there alternative qualification criteria for the minimum amount exemption?

No.

13. Are there other limitations that should be imposed on the use of the minimum amount exemption?

No.

14. Should the MA exemption be repealed?

Yes.

However, there is the concern that individual investor has $150,000 in their RRSP's, RIF's, etc. that they use for the investment or they are able to borrow against the equity in their primary residence to reach the $150,000 investment threshold.

In the event that it remains, we would suggest that there are certain provisions put in place to ensure that investors are not spending all of their RRSP.s or borrowing against the equity in their primary residence in order to meet this exemption's criteria. Not withstanding the foregoing, it is or respectful opinion that in a majority of cases where non-accredited investors are relying on this exemption, this is where a bulk of the funds come from. Individuals should not be putting their homes or all of their retirement savings at risk simply because that's the only way they can get enough money together to meet an exemption so that they can invest into an investment which they otherwise wouldn't qualify.

15. If the MA exemption was repealed:

(a) Would that materially affect issuers' ability to raise capital?

No, mentioned above in our response to Question 8 above, we believe most investors that have $150,000 to invest in a single issuer likely also fall into the AI category.

(b) Is the AI exemption (in its current or modified form) an adequate alternative to the minimum amount exemption?

Yes, in a modified more disclosure based form.

16. Are there other options for modifying the MA exemption that we should consider?

No.

17. Do you have comments on the issues described above?

As stated in our answer to Question 1, we agree that no amount of money necessarily equates to investor "sophistication". We see little or no merit in increasing the amount as has been proposed.

As stated above, we do not agree with the comment from certain "stakeholders" referring to the allowance of "unsophisticated, retail investors to participate in the exempt market". The exempt market is now predominantly comprised of registered advisors who have a duty to act in their clients best interests, as is the case in the public markets.

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

No.

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

We agree with maintaining the definition of an accredited investor in its current form; however we do believe a modification should be made to the exemption itself whereby

issuers are required to provide a prescribed minimum amount of disclosure to prospective accredited investors.

20. What should the income and asset thresholds be?

We feel that the current thresholds that define an accredited investor are sufficient.

With respect to your questions as to certain criteria that would change our answer to this question, we refer you to our answers to those same additional questions in Question 9.

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

See our answer to Question 7.

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

As there are other exemptions available, we feel that the impact would not be detrimental in a majority of jurisdictions and the OM exemption would simply be relied on more frequently. However, in Ontario the exempt market would all but cease to exist unless the OM exemption were adopted.

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

We feel the current criteria in place are adequate and that individual investors should effectively be treated the same as institutional investors. While, as we stated in our answer to Question 1, due consideration should be given to including individuals with certain professional designations under the definition of accredited investors.

With respect to your questions as to certain criteria that would change our answer to this question, we refer you to our answers to those same additional questions in Question 9.

24. If we changed the qualification criteria, what would the impact be on capital raising?

There is an inverse relationship between the qualification criteria and the amount of capital raised. If there are not other suitable exemptions available in a jurisdiction then capital raised will decline proportionately or greater to the amount in which the qualification criteria are increased without any conclusive benefit being derived.

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

Yes.

With respect to your questions as to certain criteria that would change our answer to this question, we refer you to our answers to those same additional questions in Question 9 above.

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

Yes.

If a limit is appropriate, what should the limit be?

It should be tied to a percentage of assets as should all investments.

With respect to your questions as to certain criteria that would change our answer to this question, we refer you to our answers to those same additional questions in Question 9 above.

27. If investment limitations for individuals were imposed, what would the impact be on capital raising?

See our answer to Question 24 above.

28. An issue with the AI exemption is ensuring compliance with the qualification criteria. One way to improve compliance with the AI exemption would be to require an investor's accredited investor status to be certified by an independent third party, such as a lawyer or qualified accountant. Should this be considered in a review of the AI exemption?

No. This would put the onus and legal liability on a third party to verify the financial status of the investor rather then relying upon the representations and warranties of the investor. There should still be some personal accountably and responsibility by the investors. Why should we tailor our securities laws in an effort to protect the minimal number of investors who willingly falsify documents?

29. Do you agree with imposing such a requirement?

No.

30. Are there alternatives that we should consider?

Yes, please see our answer to Question 31.

31. Are there other options we should consider for revising the AI exemption or for substituting an alternative exemption?

A possible option to consider when revising the AI exemption would be to provide for different classes of investors, each with difference levels of investor protection needs and ability to withstand loss. The staff of the CSA would have to make the precise formulations as to the specific classes.

If the AI exemption remains, we suggest that the current thresholds are either maintained or possibly reduced and that a defined instrument, similar to that of a Term Sheet is introduced.

Commentary & Conclusion

It has not even been 18 months since full implementation of NI 31-103 and a substantial reinvention and revitalization of this industry has occurred in that time. We have been working constantly with clients to get them registered and to work with them to ensure that they are in compliance with the most recent changes. There has not been enough time since the implementation of NI 31-103 to truly gauge if the changes have been successful. Now the CSA is proposing possible changes to the exempt market industry.

We have first had experience with our some of our clients' inability in Canada to access traditional loans from institutional lenders in order to expand their business. As a result, we have seen an increased need to rely upon not traditional financing. Accordingly, our country's capital markets would be better served by securities regulators searching for more exemptions to provide issuers with as opposed to restricting and removing existing ones and unnecessarily denying issuers access to capital. We believe that the constant changing of securities laws is more of a threat to the investing public and integrity of our capital markets than either the MA Exemption or the AI Exemption.

There is a need to strike a balance between "investor protection" and "efficient capital raising". From our experience, in our practice we have not run into issuer's that are looking to defraud people, but rather the issuer's are looking to access capital to develop and grow their businesses. In return, they are willing to share in the upside or profits from the growth of their business. It is a beneficial relationship for both the issuer and the investor and countless jobs have been created and revenue generated for the Canadian economy as a result.

As we mentioned above, thank like to thank you for taking the time to read our letter. Should you have any questions or concerns, please feel free to contact either of the writer's below.

Yours truly,

MILLER THOMSON LLP

Per: *"Greg P. Shannon"*

Greg P. Shannon, LL.M.

MILLER THOMSON LLP

Per: *"Darren M. Smits"*

Darren M. Smits

CC: WEMA Attention: Craig Skauge - Presidet