February 29, 2012

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
e-mail: gsmith@bcsc.bc.ca

M^{e} Anne-Marie Beaudoin
Corporate Secretary
Autorité des marchés financiers
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

About the Western Exempt Market Association

Our association was founded in 2011 by a number of firms and individuals involved in the exempt market securities industry, who saw a need for a collective voice to preserve the flexibility and unique culture of the Western Canadian capital markets and the exempt market in general. While we are located in Western Canada, our collective members include multiple Ontario based firms who also feel the need to be part of an active voice on our industry's behalf. Through our members, we have first hand insight and knowledge of the operation and corresponding needs of the exempt market in Canada.

Our mandate is to be active in the growth of the exempt market's public profile and the improvement of its reputation. We look forward to helping further develop a practical regulatory framework that fosters development of the exempt market by allowing entrepreneurs to efficiently raise capital and investors to participate in a broader range of investment options

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while being adequately protected. With this in mind, we would like to submit the following comments in response to CSA Staff Consultation Note 45-401*.

*When reading, please note that our members predominantly deal with individual retail investors and we have tailored our answers accordingly.

Consultation questions

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

By definition, the only appropriate basis for the minimum amount ("MA") exemption has to be a minimum dollar amount (that theoretically equates to investor sophistication). While we acknowledge the sophistication of a number of investors that rely on this exemption (those who would also presumably be accredited investors), we are of the opinion that no amount of money necessarily equates to investor sophistication and thereby we reject the idea of an exemption based solely on this criterion.

We hold a similar opinion in relation to the accredited investor ("AI") exemption. While an individual's net worth and/or income (i.e. financial resources) may be a better indicator of investor sophistication than a lump sum of subscription proceeds, they, in and of themselves also do not necessarily provide sufficient grounds for an exemption. We believe that regardless of the exemption being relied upon, a minimum amount of disclosure should be presented to prospective investors much like what is provided by the offering memorandum ("OM") exemption. In the provinces that permit it, the OM exemption has made the exempt market, and accordingly comprehendible investment opportunities, available to millions of Canadian investors who would otherwise be unable to participate. Perhaps even more importantly, the OM exemption has resulted in billions of dollars being placed into entrepreneurial ideas, start ups, and small businesses which are at the heart of the Canadian economy.

We feel that in certain cases (i.e. those with professional designations including CA, CMA, CFA, LLB, etc.) educational background is an appropriate basis for an exemption. As well, provided the individual in question works in an appropriate position in the financial sector, work experience may also be sufficient grounds for an exemption. We feel that investment experience may well be sufficient grounds for an exemption; however, we would need to further understand what would be deemed "sufficient" experience in order to answer in greater detail.

While we understand the topic of this consultation are the MA and AI exemptions, securities related discussions are ultimately about disclosure and suitability. Given that, we must ask what protections do prospectuses provide that the OM exemption does not? Like OMs, prospectus offerings provide no mechanism to ensure investors will not lose some or all of their money. Therefore, why are they presumed "safer" than those products offered by an OM? It is only in theory, and not in practice, that the inordinate amount of disclosure provided by a prospectus benefits investors. Prospectuses and the financial statements relating to public companies may be well understood by both regulators and the legal community but they are effectively too complicated and too lengthy for average investors to understand. Given the overwhelming amount and complexity of information contained within a prospectus, investors often choose to "sign here" and forego reading the disclosure materials provided. We feel that this "over disclosure" is in many cases paramount to no disclosure at all.

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 of impenetrable disclosure 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?

While we realize the necessity of the limited exemptions available to those that are truly not "in the business" (and therefore not registered), the treatment of transactions where there is a registrant involved should be entirely different.

Having a registrant involved generally ensures the best interests of investors are served by "know your client", "know your product" and suitability advice being in place. When honestly applied, these items should alleviate some if not all concerns. Exempt market trades involving a registrant should be viewed with the same lack of prejudice as those that occur in the public market.

3. Do you have comments on the issues described in background #3?

We feel that appropriate disclosure on a given issuer should be made available for each investor regardless of the amount of money being invested.

We vehemently reject the comment from certain "stakeholders" referring to the allowance of "unsophisticated, retail investors to participate in the exempt market". **All investors should have the right to participate in the exempt market.** All investors should have access to easy to understand investments where they have the opportunity to meet with senior management, perform their own due diligence and make informed investment decisions.

With the involvement of a registrant, along with the providing of disclosure (as in the case of the OM exemption), how materially does participation in the exempt market differ from investing in the public markets? 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. There are two primary concerns that securities regulators should have concerning all investments, those being proper disclosure and suitability, both of which are now covered in the exempt market since implementation of National Instrument 31-103 ("NI 31-103").

We agree that the MA exemption often causes the unintended consequence of investors subscribing for more than is prudent given their personal circumstances. The MA exemption encourages the very behaviour that securities rules are designed to prevent (i.e. portfolio concentration in a limited number of illiquid securities). Again, we point to the advisability of the OM exemption as it allows investors to purchase an amount of securities prudent to their comfort level and their given circumstances. In those jurisdictions where the OM exemption is not available however, many investors are forced into investing $150,000 or otherwise missing out on an opportunity. If this exemption remains and, even more so, if the number is adjusted to inflation, this will simply compound an already troubling situation.

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

Yes, as explained further herein.

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

No.

6. How much should the minimum investment threshold be increased?

We submit that for individual investors this exemption should be repealed as opposed to adjusted.

Would your answer to this question change depending on whether:

- **any disclosure is provided to investors, including risk factor disclosure**? No.
- **the purchaser is an individual, instead of an institutional investor?** We have no objection to this exemption being available to institutional investors.
- **the security is novel or complex?** Securities regulation should have general application and should not be security specific. Complexity is relative to each investor based on their own investment knowledge base and past experience.
- **the issuer of the security is a reporting issuer?** No.
- **a registrant is involved in the distribution who has an obligation to recommend only suitable investments to the purchaser?** No.

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

While we feel this particular exemption should be repealed for individuals, we do agree that all exemptions should be periodically reviewed to ensure the underlying assumptions on which they are based are still correct. However, factors such as current market conditions, accessibility to capital for issuers of all sizes, among others, should be considered in addition to inflation when looking to make adjustments.

While we understand that these numbers have not been reviewed in a long time (since being adopted by the Securities and Exchange Commission in 1982), we feel that suddenly adjusting any number to three decades worth of inflation will have a detrimental impact on the capital markets. Accordingly, we submit that exemptions should be reviewed no more than 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?

See our answer to Question #11.

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

No.

Would your answer to this question change depending on whether:

- **any disclosure is provided to investors, including risk factor disclosure?** No.
- **the security is novel or complex?** No.
- **the issuer of the security is a reporting issuer?** No.
- **a registrant is involved in the distribution who has an obligation to recommend only suitable investments to the purchaser?** No.

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

This exemption should be repealed in regards to individuals.

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

This exemption should be repealed in regards to individuals regardless of any potential impact on capital raising, which we feel would be minimal as most who rely on it are likely also accredited investors. Protecting those who are not accredited investors (but have access to $150,000 through an inheritance, home equity line of credit, etc.) would be a suitable exchange for the minute decrease of capital accessibility. The goal of investor protection must be as important a consideration as the ease of capital access for issuers.

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?

It should only be able to be relied upon by institutions.

14. Should the minimum amount exemption be repealed?

As it relates to individuals we answer yes.

In the event that it remains, we suggest that certain provisions are put in place to ensure that investors are not leveraging their primary residence in order to meet this exemption's criteria. We feel that in a majority of cases where non accredited investors are relying on this exemption, a bulk of subscription funds come from a home equity line of credit. Individuals should not be putting their homes at risk simply because that is the only way they can get enough money together to meet an exemption (and get into a given investment) for which they otherwise would not qualify.

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.

15. If the minimum amount exemption was repealed:

- **would that materially affect issuers' ability to raise capital?** See our answer to Question #11.
- **is the AI exemption (in its current or modified form) an adequate alternative to the minimum amount exemption?** Yes.

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

See our answer to Question #13.

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

We agree that the AI exemption is often relied upon dishonestly with investors misrepresenting their financial status. We feel this predominantly occurs in Ontario due to the lack of other suitable exemptions, namely the OM exemption. Adoption of the OM exemption would permit all Ontario residents to invest in the exempt market (to certain thresholds if "eligible investor" status rules were concurrently adopted) and that would significantly reduce the amount of dishonesty due to the current thresholds. The current limitations in Ontario effectively restrict the exempt market's availability to the less than 5% of the population who legitimately qualify as accredited investors (and those few who have $150,000 but do not meet accredited investor status). If an inflationary based adjustment is made (without a corresponding adoption of the OM exemption) the percentage who qualified would drastically decrease even further and dishonesty would proportionately increase.

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 feel the current definition of an accredited investor could be further broadened. We also feel that modification should be made to the AI exemption 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 and if anything could be slightly reduced.

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 be minimal in a majority of jurisdictions and the OM exemption would simply be relied on more frequently. **In Ontario however, the exempt market would all but cease to exist unless the OM exemption were adopted.**

So long as proper suitability advice is in place (as addressed in NI 31-103) and adequate disclosure is provided (as could be addressed by adoption of the OM exemption), why should Ontario based Exempt Market Dealers and Dealing Representatives only be allowed to offer their selected products to such a small portion of their province's population? Furthermore, why should only such a small percentage of the Ontario population have the opportunity to invest in entrepreneurial ventures and why are entrepreneurs themselves forced to go west in search of capital?

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 consideration should be given to including individuals with certain professional designations and work experience 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 ease of raising capital. If there are no 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 certainty of any corresponding benefit resulting from the change.

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

Yes. Were they not able to do so, 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 RSP pool in Canada.

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.

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

No. If an investor is accredited and given sufficient disclosure there should not be limitations, particularly if a registrant is involved.

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

See our answer to Question #24.

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?

Absolutely not. The logistics, administration and cost associated with this idea far outweigh the perceived benefits. If an investor chooses to be dishonest as to their status and the investment fails, then they hopefully learned a lesson about following the rules. **Why should we tailor our securities laws in an effort to protect those who willingly falsify documents?** Personal accountability of the investor has to come into play at some point.

29. Do you agree with imposing such a requirement?

No.

30. Are there alternatives that we should consider?

No.

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

If the AI exemption remains, we suggest that the current thresholds are either maintained or possibly reduced and that the definition of an AI is broadened to include those with professional designations including CA, CMA, CFA, LLB, etc. (and also to possibly include those with related work experience and "sufficient" investment experience). We also suggest a defined instrument, similar to a term sheet is introduced. OMs provide adequate disclosure for average investors so perhaps a 5 to 10 page document, focused on risk factors, capital structure, features of the security, all of which are signed off on by the issuer's officers/directors (as not containing misrepresentations) would be suitable in the case of the AI exemption.

We would also suggest that an individual issuer is restricted as to either (or both) how much money they can raise under this particular exemption and how many subscribers they can accept subscriptions from while relying on this exemption. Were an issuer restricted to say $3,000,000 or 75 investors under this exemption, the abuse currently afforded by it would be reduced. Provided it's available in the applicable jurisdiction, more issuers would rely on the exemption which they generally should, that being the OM exemption.

General Commentary & Conclusion

We need to put a stop to modifying securities regulation just for the sake of doing so. There is no evidence of harm or other necessity driving a number of proposed changes, including these, particularly since the adoption of NI 31-103. Securities regulators should be making changes where evidence necessitates change is required; otherwise the laws should simply be maintained so the market can gain a better understanding of the existing rules. To burden our system yet again with more hurdles and costs of capital, we will make it more difficult to encourage economic growth and development.

There is a need to strike a balance between investor protection and efficient capital raising and the pendulum has clearly shifted too far towards protecting investors at the cost of the efficiency of our capital markets. No matter what the regulation, no amount of rules will prevent some people from making poor investment decisions.

While we acknowledge that in the past the exempt market has not been without its problems, not even 18 months have passed since full implementation of NI 31-103 and a substantial reinvention and revitalization of this industry has since occurred. Given that and the current economic environment in which we find ourselves, more time needs to be given for this new regime to mature without further changes being proposed. While we appreciate the constant attempts to improve our securities laws, we believe that the constant changing of these laws is more of a threat to the investing public and integrity of our capital markets than any particular exemption.

The exempt market is an essential component of our capital markets for entrepreneurs, small business, start ups, and investors. As it relates to business, our industry fills the financing needs of those who do not meet the criteria of the traditional brokerage world. As it relates to investors, our industry fills the need of lower cost, easy to understand, non-volatile investments. We caution securities regulators on continuing to shift regulation of the exempt market so far toward protecting market integrity as the result will be an inefficient marketplace inevitably causing greater damage to investors and our economy.

Despite our feeling that removing the MA exemption for individuals may be prudent, **we believe our country's capital markets would be better served by securities regulators searching for more exemptions to provide to issuers as opposed to restricting and removing existing ones and unnecessarily denying issuers access to capital.**

Thank you for taking the time to read this 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.

We are happy to discuss the contents of our letter and this issue further should you wish.

Sincerely,

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