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

Heathbridge Capital Management Ltd. is a Portfolio Manager firm (PM), with registrations in 8 provinces across Canada. Our primary focus is on managed accounts, though we have two smaller pooled funds which are designed to assist the investments of families of our clients. These two pooled funds are sold directly to investors who are Accredited Investors (AI) and those allowed under exemptions received from the CSA.

In a narrow sense, given our exemptions, these changes do not affect Heathbridge and might make it harder for our competitors (and therefore slightly easier for us as our competitors wrestled with regulatory hurdles). In the interest of fostering fair and efficient capital markets, however, we feel that we need to comment and to caution about some of the changes contemplated.

The regulatory regime in Canada was greatly enhanced with the implementation of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (NI 31-103) and the 2009 registration reform initiative led by the CSA in this regard significantly improved investor protection and the regulatory oversight of our members. For instance, NI 31-103 created harmonized national registration categories for PMs and other advisors and enhanced proficiency requirements for all registrants and mandatory working capital and insurance

requirements for registrant firms. Investor protection has been enhanced by sensible clarifications on requirements for know your client (KYC), know your product (KYP), suitability requirements and the eventual requirement to offer mediation and arbitration to clients of portfolio managers. We believe the harmonization and modernization of NI 31-103 was an immense step in the regulatory landscape of our membership and provides a sufficient level of protection to investors who chose to use portfolio managers to manage their investments. In our view, such harmonization and modernization efforts in the exempt market would also further and promote efficiency, increase investor protection and promote consistent regulatory requirements across Canada. We believe that any review of the AI exemption should recognize the regulatory framework established by NI 31-103.

We think it is prudent to give some time allow for NI 31-103 to work and not to make changes on the AI exemption at this stage with one key exception that was not directly raised in the Consultation Note:

Harmonize NI 45-106 – Managed Account Exemption in Ontario

We, along with our industry association the Portfolio Management Association of Canada (PMAC) and most of our competitors, feel that regulatory cooperation and coordination of the AI exemption and MA exemption and harmonization of the exemptions across all jurisdictions in Canada should be a priority for the CSA during this review process. Harmonization of NI 45-106, generally, would promote further efficiency in Canadian capital markets to the benefit of investors and foster confidence in those markets.

A key area for harmonization is the managed account exemption in Ontario. One of the classes of accredited investors in NI 45-106 is a registered adviser acting for a fully managed account (a discretionary account) in the account holder's jurisdiction. Under this exemption, the purchaser of the security (the account holder) doesn't need itself to be an accredited investor. The advisor is deemed to be the accredited investor. However, a portfolio manager acting on behalf of a fully managed account in Ontario is not an accredited investor when purchasing securities of an investment fund. Ontario has carved out this exemption when the exemption relates to securities of an investment fund such as a pooled fund. As such, a managed account in Ontario may only invest in an investment fund on an exempt basis where the holder of the account either personally qualifies as an "accredited investor" as defined in NI 45-106 or invests $150,000 in the investment fund.

This unharmonized section of the AI exemption makes it increasingly difficult for registered firms managing assets of clients located across different provinces, where in most parts of the country this is permissible. The practice of allowing investment managers to act as an accredited investor for their clients for investments in pooled funds should be consistent across Canada and it remains unclear as to why the OSC continues to have policy concerns. We recommend that Ontario re-evaluate this carve-out and review its current practice of screening the investor, particularly because the

investor has actively hired a portfolio manager (who should qualify as the accredited investor). Like other provinces, PMs in Ontario have the proficiency, registration status and requirements, financial strength and human resources to support and properly service such accounts. We recommend that NI 45-106 be amended to allow fully managed accounts in Ontario to qualify as "accredited investors" for purchases of securities in investments funds such as pooled funds.

In the interim, the CSA should not move to alter the Accredited Investor apart from the harmonization of the OSC that we have noted above.

Why do we feel no further changes are required?

1. Investor protection has been greatly enhanced through NI 31-106 as noted above.
2. Investors now have access to lawyers who will sue financial firms and advisors on a contingency basis.
3. Financial assets and income are a reasonable proxy for access to financial resources in the event of a dispute with a financial firm. According to John Stackhouse, the editor of the Globe and Mail at a recent speech, the top 1% of Canadians earn $196,000. There is no need to raise the threshold on income or financial assets.
4. Raising thresholds would make it harder for smaller companies to raise money from friends and family or angel investors. Canada needs more entrepreneurial companies not more red tape to slow them down.

Our industry association and others have written more articulately on this topic but we would echo Hippocratic oath, “Do No Harm”, when contemplating regulatory change.

Sincerely,

Richard M. Tattersall, CFA
Vice-President, Portfolio Manager & Chief Compliance Officer