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February 29, 2012

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

Dear Mesdames et Messieurs:

Re: CSA Staff Consultation Note 45-401
Review of Minimum Amount and Accredited Investor
Exemptions - National Instrument 45-106 ("NI 45-106")
Our Matter No. 0047535 BST

I am a lawyer with over 50 years in commercial practice and since the late 1960's have been practicing in the area of securities law. I was active in the real estate related securities projects in the late 1970s and early 1980s back in the days of MURBs and CRSPs, when in connection with a variety of such projects I represented Equion Securities Inc., Lakeview Securities Inc., North Canadian Securities Inc. and Royal LaPage Securities Inc. With the assistance of then Legal Counsel to The Manitoba Securities Commission, I was the author of Manitoba's first exemption regime (other than the \$97,000 exemption then available to institutional investors in Manitoba), namely Sections 88-93 (since repealed) of Manitoba Regulation 491/88, the Securities Regulation to *The Securities Act* (Manitoba).

I am currently general counsel to an investment dealer as well as to an exempt market dealer in Manitoba, but my views as herein expressed do not necessarily express the views of either of them. My views are derived from experiencing the workings of various securities exemptions over more than 30 years. Over that time I think that I have gained some sense of what is needed for the protection of sophisticated investors and the raising of capital by small and medium sized enterprises in the exempt market, and also what works well and what does not.

I will organize my views to respond to the consultation questions contained in CSA Staff Consultation Note 45-401 (the “**Consultation Note**”) - Review of Minimum Amount (the “**MA**”) and the Accredited Investor (the “**AI**”) exemptions - under the various headings set out below and used in the Consultation Note:

2. Principles underlying the MA exemption and the AI exemption:

Answers to Consultation Questions

1. The appropriate bases in my view for the MA and the AI exemptions are financial resources and investment experience; both should be present, as should however financial and other key information about the issuer, without which even “money and smarts” can count for very little. Educational background, work experience and the intervention of expert advisors are requirements that I would not support.
2. I have not found that involvement in distributions of registrants, while possibly a good idea in theory, works well in practice. Not only are registrants reluctant to involve themselves in investments which do not directly result in commission for them, they typically have to educate themselves in investments which being of a class “alternative” to those they deal in every day may not be familiar to them. As to their compensation, they are unsure of on what basis to charge a fee to a client who is already paying a fairly hefty commission - between 7% and 12% - to an unregistered “finder” or to a person or company registered in the exempt market as an exempt market dealer (an “**EMD**”). An investor client for his or her part is not enthusiastic about adding to his/her cost of investing. I have in fact seldom experienced registered dealers other than EMDs becoming involved with prospective purchasers in the raising of capital for small and medium sized enterprises in the exempt market.

3. The MA Exemption

Answers to Consultation Questions

Issues:

- I agree that the size of an investment does not assure investor sophistication, or “smarts”, although it does imply some measure of sophistication.
- The current threshold is adequate; \$150,000, while not having the purchasing power that it had in 1987, is still a very significant amount to most individual investors with whom I have contact. The MA exemption is not in my experience relied on as frequently as the AI exemption, but I believe that it still has utility and should be retained as a useful alternative to the AI exemption. It is however my experience that if an investor has \$150,000 to invest, he/she also most likely qualifies as an accredited investor. As to the availability to such an investor of protections provided by a prospectus, such as for example rights of rescission and damages, many of such rights may have little efficacy in the exempt market. Issuers in that market are often in “start-up” or at least “early days” mode, and are

typically short of capital, so that rights of damages may be empty, as so may also rights of rescission. Most investors in the exempt market are prepared to assume greater risk in exchange for the rewards that they see as greater than they could achieve with “conventional” investments.

- A staged investment in smaller increments might possibly better protect the interests of some investors’, but in my view would not meet the “capital now” requirements of the typical issuer of alternative investments in the exempt market. I think that it could be argued more successfully that staging an investment in smaller increments would be more likely to attract some investors who should not be relying on the MA exemption at all. I would recommend that if an investor is not in a position to invest his/her \$150,000 at one time, the MA exemption is likely not suitable for him/her; it should not be made easier for him/her to rely on it by staging the investment in smaller increments.
 - Raising the bar or repealing the MA exemption would indeed adversely affect capital raising, although perhaps its effect would not be unduly dramatic, so long as the AI exemption is retained in its present form. I would retain the MA exemption at its present level, but if the experience of others should indicate a clear need for change, two additional requirements could perhaps be introduced, namely that the proposed investment of \$150,000 should not exceed, say 30% or some other suitable percentage of the investor’s total financial assets, as defined in NI 45-106 and financial and other basic information relative to the issuer should be required to the investor.
4. I have no other issues with the MI exemption.

Answers to Consultation Questions

(a) 5. **Maintain the status quo**

I would suggest that it is not necessary to strictly maintain the status quo.

(b) 6. **Adjust the \$150,000 threshold**

I would not increase the \$150,000 threshold but, as stated above, financial and other basic disclosure relative to the issuer might be required and each investment could be limited in amount to some percentage of the value of the investor’s financial assets.

7. The \$150,000 threshold should not be periodically indexed to inflation. \$150,000 is still a significant amount and beyond the reach of those sometimes referred to as “widows and orphans”. The threshold is adequate for now and for the foreseeable future.
8. Changing the \$150,000 threshold, except possibly as above, would likely have a negative impact on capital raising.

(c) Limit the use of the exemption by individuals

9. Limiting the use of the MA exemption by individuals would be a regressive step and tend to impose a financial penalty on an individual wishing to use the exemption, namely the cost and trouble of forming and capitalizing an investment entity that would itself be entitled to use the MA exemption. Individuals should continue to be entitled to acquire investments under the MA exemption, provided that at least financial and other basic issuer information is furnished to the investor. In the case of novel or complex investments, investors could I suppose be asked to acknowledge in the Risk Acknowledgment forms presently required by NI 45-106 the novel or complex nature of their investments and that they have been advised to seek legal or financial advice concerning them.

It would defeat part of the purpose of the MA exemption to restrict its availability to issuers that are reporting or “qualifying” issuers.

As to involvement of registrants, to be meaningful such involvement could demand a significant due diligence in order to enable the registrant to make a suitability recommendation. This would be due diligence concerning investments about which there would typically be little or no independent research and analysis available to the registrant other than what was provided by the Issuer.

10. The limitations I could understand would involve fixing maximum percentages for investments of investors’ total financial assets, require financial and other basic issuer disclosure and perhaps enhanced risk acknowledgement, all as stated above.
11. Limiting the use of the MA exemption to non-individuals would have a negative impact on capital raising.

(d) Use alternative qualification criteria or impose other limitations

12. As already stated, the AI exemption might often serve as an adequate alternative to the MA exemption.
13. No other limitations should be imposed on the use of the MA exemption.

(e) Repeal the exemption

14. The MA exemption should not be repealed, but it could perhaps be changed as stated above.
15. If the MA exemption was repealed and the AI exemption was retained in its present form, the ability of small and medium sized enterprises to raise capital would be less seriously impacted than otherwise. While not in my view an entirely satisfactory alternative to the MA exemption, the AI exemption would be an alternative in perhaps a majority of cases.

16. I would identify no other options for modifying the MA exemption that CSA Staff should consider.

4. AI Exemption

Answers to Consultation Questions

17. The current thresholds for income and assets are appropriate; and any increases would exclude investors who do not need prospectus protections. As to the income/asset thresholds not being adequate proxies for sophistication, this debate has raged back and forth for as long as I can remember. While having money doesn't obviously equate to having "smarts", it perhaps translates into some probability of knowledge and sophistication and at least addresses the ability of the investor to withstand the entire loss of the investment.

Loss of the AI exemption would severely impact capital raising by at least small and medium sized enterprises, which presently make extensive use of it. As to compliance with qualification criteria and concerns of regulators, the regulators are perhaps attempting to reach further than they should or need to do. Individuals claiming to qualify under the AI exemption at present not only acknowledge that fact but they also sign a most explanatory Risk Acknowledgement form, in which they more than once certify that they can afford to lose their entire investment. The regulators should not feel that they need to inquire further than this into the private affairs of individuals purchasing under the AI exemption. Surely these individuals must be assumed best to know their own situations and whether they truly meet the accreditation criteria. Many investors I know would regard any further intrusion on the part of the regulators or denial of the AI exemption as being for want of sophistication unacceptable if not insulting.

18. I have no other issues with the AI exemption. I think it has worked well in serving the interests both of issuers as well as investors. In the exempt market, some enterprises are bound to fail and prospectus type protections will not change that. In that market, there is both greater risk as well as greater reward for investors. It has been suggested that the 2-6-2 rule-of-thumb in the venture capital industry may well also apply to the exempt market. By applying this rule, one finds that of 10 investments, 2 investors will lose their money, investors will break even on 6 and on 2 they will reap extremely handsome rewards.

Answers to Consultation Questions

(a) Maintain the status quo

19. I would be comfortable with retaining the AI exemption and the definition of an accredited investor substantially in their present forms, but have the additional comments above and below.

(b) Adjust income and asset thresholds in the definition of accredited investor

20. The income and asset thresholds should remain as they are, but consistent with my responses relative to the MA exemption, I would accept a requirement of financial and basic issuer disclosure, and as well a requirement that an investment should not exceed a given percentage of the accredited investor's total financial assets. Again, concerns over novelty or complexity could be covered off by an enhanced Risk Acknowledgement form. Any requirement of an issuer necessarily being a reporting or "qualified" issuer or of involving a registrant in any exempt distribution would severely limit the usefulness of the AI exemption.
21. The income and asset thresholds should not be periodically indexed to inflation. Increases in the value of many assets - for example housing and transportation - do not match increases in inflation. Many Canadians are lucky - and indeed, they are the exceptions - if their incomes and the values of their assets keep abreast of inflationary increases. Any future indexing should not be automatic and should only be made after appropriate periods of stakeholder consultation, so that any increases only reflect real increases in income and assets that are actually experienced by investors.
22. The extent of impact of any changes in these thresholds would obviously depend on the nature of such changes, but increases, even relatively small, could have a substantial negative impact on capital-raising in the exempt market.

(c) Use alternative qualification criteria for individuals

Alternative qualification criteria for individuals such as those listed would be intrusive and would raise privacy issues.

23. My answer to this question would be consistent with answers above.
24. Any changes in qualification criteria could have a substantial impact on capital raising. The present AI exemption regime in my opinion works well.

(d) Limit the use of the exemption by individuals

25. As indicated above, individuals should be able to acquire securities under the AI exemption, or capital raising by small and medium enterprises would be significantly negatively impacted.

(e) Impose other investment limitations

26. My answer to this question would be consistent with answers above.
27. If investment limitations for individuals were imposed, the impact on capital raising would be significantly negative. Many high-wealth individuals looking for investment alternatives to conventional or publicly-traded investments would be denied access to a market segment that has a constant need for high risk

investment. Higher wealth individuals in my experience are always seeking investments with potentially higher than usual rewards and for that they are willing to take greater risks, even up to losing their entire investments.

(f) Compliance with qualification criteria

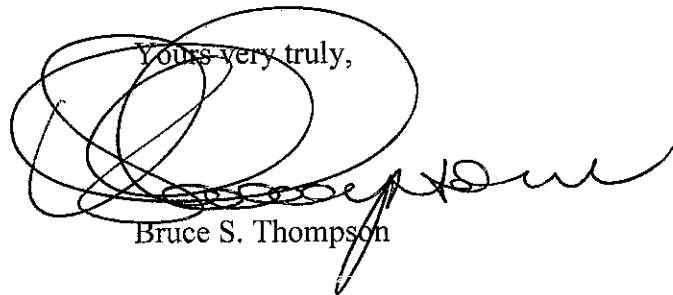
A requirement of independent certification of qualification criteria would be a significant disincentive to individuals taking the benefit of the AI exemption. It would also be intrusive into the private affairs of individuals and would be resented by many, who would consider that their own acknowledgements should be sufficient, especially taken with their Risk Acknowledgement forms. A third party certification requirement would also add cost to the individual investor, as well as impeding the smooth flow of the capital gathering process.

28. Third party certification should not be considered in a review of the AI exemption.
29. I do not agree with, and indeed would strongly disagree with, imposing such a requirement.
30. I think that, as appears from the comprehensive public consultation process initiated by the Consultation Note, CSA Staff have already considered the entire range of potentially useful alternatives.

(g) Other options

I would identify no other options for CSA Staff to consider for revising the AI exemption or for substituting an alternative exemption. Indeed, I would find it interesting to know what classes of stakeholders have raised the concerns that have given rise to the current interest of the CSA in the MA and AI exemptions. So far as I am aware, both exemptions have worked extremely well. The only criticism of them that I have heard is that they are not flexible enough and should be modified to permit even more individual investors to participate in investments otherwise denied them.

Yours very truly,

A handwritten signature in black ink, appearing to read "Bruce S. Thompson", written over a large, circular scribble.

Bruce S. Thompson