

March 5, 2012

Ms. Jo-Anne Matear
Manager, Corporate Finance
Ontario Securities Commission
20 Queen Street West, Suite 1903
Toronto, Ontario M5H 3S8

Dear Ms. Matear,

Thank you for the opportunity to attend the discussion on February 2, 2012 at the OSC's office regarding the review of the \$150,000 minimum amount and accredited investor prospectus exemptions. We felt it was a very useful dialogue that touched on important considerations in the application of the current prospectus exemption categories. As was suggested at that meeting, we are taking the opportunity to respond to the Consultation Questions listed in the CSA Staff Consultation Note 45-501 published on November 11, 2011.

As an introduction, we would like to remark on "protecting investors from unfair, improper or fraudulent practices" and the creation and sale of securities. Registrants are already subject to duties and requirements that protect investors. Where a registrant is involved in an exempt market offering, we believe the focus for regulators should be on the proper enforcement of those existing duties and requirements which include suitability obligations. Where a registrant is not involved in an exempt market offering, the current Accredited Investor exemption appears to be an adequate threshold for participation. We admit we have limited visibility in the non-brokered sector.

Before we respond the Consultation Questions, we would like to discuss each premise for the minimum amount exemption and the AI exemption.

- **a certain level of sophistication**

We believe this is a valid premise yet we see two issues when referring to the concept of "sophistication."

We do not believe that "a certain level of sophistication" should be measured in dollar terms. We can think of many examples of individuals who may be very knowledgeable or "sophisticated" in regard to investment products and the capital markets and yet may not earn a high income or possess a high, liquid net-worth. Conversely, there are a number of very wealthy individuals who may have a difficult time understanding various investment products or the variables that impact our capital markets.

Secondly, we believe it is misguided to assume that a person's education or achievement automatically affords them the ability to understand the risks associated with a securitized investment, for example. A neurosurgeon may be neither unsophisticated nor uneducated but also may not readily understand the mechanics of a principal protected note.

If a "certain level of sophistication" continues to be a premise then we will need to succinctly define what that means and apply specific ways to measure it. For example, we support the standard that registration under the Securities Act is one reasonable way to measure this.

- **the ability to withstand financial loss**

This is a valid premise and a good contrast to the concept of sophistication. For example, a person who lacks the "sophistication" or the knowledge and experience to assess the risk of an investment may not care, as they have the financial means to suffer the loss of their investment.

We think this premise opens up another valid and important scenario that doesn't exist under the current prospectus exemptions. A person of moderate financial resources, e.g. a person that does not meet the current financial tests of an Accredited Investor, may be willing to suffer the loss on a smaller investment that represents say only 10% of their total liquid net worth for the potential of a significant capital gain. The current regulations for the exempt market restrict many Canadians from participating even in smaller amounts and we do not believe this is ultimately in the public interest but privileges the wealthy.

In this scenario, the level of sophistication becomes less relevant. The question is what constitutes the ability to withstand risk and what is the appropriate proxy?

- **the financial resources to obtain expert advice**

This is a valid premise but we would also argue that many "unsophisticated" and wealthy investors don't know what they don't know. So in practical terms, this premise may be more reasonably defined as "the ability to withstand financial loss".

- **the incentive to carefully evaluate the investment given its size**

We believe this is a flawed premise. In this premise, we assume that individuals will have the resources and means to *independently* evaluate a significantly large investment, and are motivated to do so. History has shown this is often not the case. In one way, allowing a minimum investment size exemption may encourage larger investments by those persons who would not otherwise be comfortable with that participation level.

Our Response to the Consultation Questions

Question 1

In the context of a brokered offering, we think an investor's ability to participate in the exempt market should be premised on a **certain level of sophistication or the ability to withstand financial loss**, in the context of an overall investment strategy. Fundamentally, this is a suitability assessment. A certain level of sophistication should be based on their knowledge or experience of investment products and/or the capital markets. Formal education in this area is valid but so should demonstrable experience. We propose that knowledge and experience in the industry or sector of the investment is also a valid premise for a specific investment. An investor's ability to withstand financial loss is a function of their financial resources and their exposure to high-risk investment products, including exempt offerings.

For non-brokered, exempt market offerings, an investor's ability to participate should be premised on an Accredited Investor qualification and we believe the current AI exemption categories remain valid.

Question 2

The involvement of a registrant with a suitability obligation addresses some concerns but not others. For example, if participation in the exempt market was based only on a **certain level of sophistication or the ability to withstand financial loss** then an Advisor should be able to manage that risk in the context of an overall portfolio strategy. On the other hand, where a minimum investment amount exemption is used then it may encourage both the client and the advisor to agree on a portfolio with greater inherent risk than the client would otherwise accept.

Question 3

No additional comments other than we believe the minimum investment amount exemption is a flawed premise for access to the exempt market.

Question 4

Minimum investment amounts may also foster a perception of unfair advantage being given to a certain group of investors.

Question 5

No, the minimum investment exemption should **not** be a qualification for participation in the exempt market.

Question 6, 7, 9, 10, 11, 13 and 16

There should be no minimum investment exemption for participation in the exempt market.

Question 8

If the \$150,000 exemption was removed, as we and others suggest, issuer's will cry foul. To be fair, doing that alone would impair their ability to raise capital in the short-term. We argue that this change should be offset with a new exemption based on an investor's maximum exposure to the exempt market (see response to Question 12 below).

Question 12

Yes. Allowing all investors to participate in the exempt market up to a maximum percentage of the investor's liquid net-worth, e.g. 10%, would be more fair towards those investors who currently don't qualify under the AI exemption. For greater certainty, all of an investor's current exposure to the exempt market should not exceed a certain percentage of their liquid net-worth, e.g. 10%. Investors could make an undertaking to this effect similar to the undertaking that Accredited Investors now make under 45-106.

If all investors had access to the exempt market, and if those investors with moderate financial resources were able to participate in smaller amounts, we expect that an issuer's ability to raise capital would be improved. We believe the access to capital would be improved both on an absolute basis and on a risk-adjusted basis.

Question 14

Emphatically, yes.

Question 15

- We believe that the repeal of the minimum amount exemption and replacing it with a maximum percentage qualification (outlined in our response to Question 12 above) would enhance an issuer's ability to raise capital, and encourage a more appropriate shareholder base.
- The current AI exemption may be adequate to replace the minimum amount exemption. But without some form of replacement to the minimum amount exemption issuers will exclaim that damage will be done to the capital markets.

Question 17 and 18

Assets and income are not good proxies for investor education and or sophistication but they are reasonable tests for individuals who can afford a certain amount of risk capital. For brokered private placements, the focus should always be on suitability. For the exempt market, suitability can be established by either a maximum exposure to "high risk" investments (see response to Question 12 above) or by a combination of the client's knowledge and understanding plus their financial resources, in the context of an overall investment strategy. For non-brokered, exempt market offerings, the current AI exemption is reasonable.

Question 19

Yes, we believe that the current AI exemption is valid.

Question 20

We believe the current income and asset thresholds are adequate but a clear and concise risk disclosure document should be provided to the investor.

If a registrant is involved then a suitability test should be met that is not based simply on an AI definition.

Question 21

No, not necessary if the exemption is removed

Question 22

We believe the current income and asset thresholds are adequate.

Question 23

We believe you have to separate exempt market offerings into two categories and deal with them separately: brokered offerings and non-brokered offerings.

For brokered offerings, the AI exemption should be expanded with an additional qualification where the investor does not have more than X% of their liquid net worth invested in the exempt market. This category should be used if it is coupled with a suitability determination (see response to Question 12 above).

For non-brokered offerings, we suggest the current AI exemption is valid.

Question 24

We believe the changes we are suggesting would improve the ability to raise capital on an absolute basis and on a risk-adjusted basis.

Question 25

Yes, we believe they should.

Question 26

For brokered offerings, any limits have to be based on a suitability test (see response to Question 1 above).

For non-brokered offerings, imposing limits on the participation in one offering may not be effective as the individual could have far greater exposure across multiple exempt market investments.

Question 27

There are such diverse individual investors in Canada that we're not sure that a limit for individuals, by itself, is appropriate.

Question 28

It's very important that compliance with the criteria be enforced, and consequences for non-compliance applied. Certification will create all sorts of logistical problems in capital raising and simply increase costs.

For non-brokered offerings, the CSA may instead require the issuer to obtain reasonable proof from the client such as a pay stub, T4 slip, or other documents.

For brokered offerings, the current documentation that Advisors and clients complete, and the oversight that is already in place, should be sufficient.

Question 29

We do not believe that certification would be effective. We believe that it would be incongruent with the standard: "*The benefits of any regulatory initiative must be proportionate to its cost to the industry and the restrictions it imposes on market participants*".

Question 30

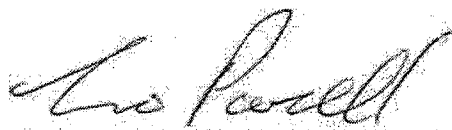
For non-brokered offerings, the CSA may instead require the issuer to obtain reasonable proof from the client such as a pay stub, T4 slip, or other documents.

Question 31

No other comments other than those we made above.

Thank you for the opportunity to provide input on this important topic.

Yours truly,



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