

Reply To: Beaty F. Beaubier
Email: bbeaubier@SHTB-law.com

March 8, 2012

Gordon Smith
British Columbia Securities Commission
PO Box 10142, Pacific Centre
701 Ester Georgia Street
Vancouver, British Columbia
V7Y 1L2
Email: gsmith@bcsc.bc.ca

M Anne-Marie Beaudoin
Corporate Secretary
Autorite de marches financiers
C.P. 246, Tour de la Bourse
Montreal, Quebec
H4Z 1G3
Email: consultation-en-cours@lautorite.qc.ca

Attention: British Columbia Securities Commission
Alberta Securities Commission
Saskatchewan Financial Services Commission
Manitoba Securities Commission
Ontario Securities Commission
Autorite des marches 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

Re: Review of Minimum Amount and Accredited Investor Prospectus Exemptions in National Instrument 45-106 Prospectus and Registration Exemptions

On November 10, 2011, the Canadian Securities Administrators (hereinafter also referred to as the “CSA”) invited comment respecting the minimum amount investment exemption found in section 2.10 of National Instrument 45-106 *Prospectus and Registration Exemptions* (hereinafter also referred to as “**NI 45-106**”) and the accredited investor exemption found in section 2.3 of NI 45-106. This letter comments on the measures proposed by CSA Staff Consultation Note 45-401 (hereinafter also referred to as the “**Consultation Note**”) as well as provides additional commentary and suggestions respecting the previously mentioned exemptions.

Over the past 25 years, our firm has acted as counsel for various private companies wishing to access financing through exempt-market offerings. We have provided guidance on the appropriateness of using specific exemptions to attain financing. In this regard, we have first-hand experience relating to the use of the exemptions discussed herein.

By way of summary, the writer's opinion respecting the proposals in the Consultation Note is as follows:

- **Minimum Amount Exemption (\$150,000)** ~ The writer takes the position that such exemption should be retained in its current form. The exemption currently appears to represent a sufficient amount of money to preclude the majority of the public from using it, especially when one examines the median incomes and wealth of Canadian households. Further, if an individual is disposed to invest such a substantial sum of money in an exempt-market investment, the onus should be on the individual to protect himself or herself.
- **Accredited Investor** ~ The writer's position is that this exemption should be retained in substantially its current form, with minor modification. In the writer's view, the current requirements to be designated an accredited investor represent sufficiently high financial thresholds so as to guarantee a sufficient level of financial sophistication. The writer suggests, however, that an additional avenue of qualification be canvassed. It is the writer's position that those persons who otherwise satisfy the requirements of an "eligibility advisor" within the meaning of NI 45-106 should be given accredited investor status. This would be so despite their inability to satisfy the existing financial thresholds. The rationale is that if advice given by an "eligibility advisor" to a client is sufficient to allow the client to meet the test of an "eligible investor" within the meaning of NI 45-106, then logically the person who is the "eligibility advisor" must be in a position to assess the merits (or lack thereof) of a potential investment, and therefore should be able to protect themselves. That is one of the underlying basis for someone to be considered an accredited investor.

A. Minimum Amount Exemption

As noted above, the writer takes the position that the minimum amount investment exemption should be retained in its current form. In this regard, the writer wishes to comment on the following discussion points raised in the Consultation Note:

1. The use of educational achievement and/or work experience qualifications; and
2. The use of arbitrary financial thresholds as a means of assuring sophistication and/or ability to withstand financial loss.

Education and Work Experience

Speaking first to educational and or experiential qualifications, the addition of such requirements appears to unduly prejudice the ability of the issuer to access capital and the ability of individual investors to access the exempt market. At present, it appears that the CSA's position in respect of education and/or experience qualifications is that such qualifications should be placed upon those dealing in securities and/or advising investors on the suitability of various securities. By way of example, National Instrument 31-103 *Registration Requirements and Exemptions* and the Dealer Member Rules of the Investment Industry Regulatory Organization of Canada prescribe various education and/or work experience requirements for those individuals involved in a dealer and/or advisor capacity.

Notably, such requirements are not placed on the investor. In many instances, those individuals who possess sufficient financial resources rely on the dealers and/or advisors who recommend exempt market products. Indeed, one of the basis upon which a person can satisfy the test of an “eligible investor” is whether that person has obtained advice regarding the suitability of the investment from an “eligibility advisor” (e.g., an investment dealer, lawyer, or accountant holding a CA, CGA, or CMA designation). Thus, the education component is not imposed on the investor per se but rather upon the person who provides advice to the investor. In keeping with this philosophy, it is the writer’s view that the onus should not be placed on the investor to be financially savvy; the onus should continue to be placed on those individuals who deal in and/or advise upon exempt market products.

Financial Thresholds

Turning next to the use of arbitrary financial thresholds, the ability of an individual investor to provide a certain amount of money does not, in and of itself, mean that the investor is either sophisticated and/or able to withstand financial loss. By way of example, the \$150,000 may represent a significant amount of an individual investor’s wealth. Further, such investor may have little or no experience in financial matters.

However, the writer recognizes the CSA’s mandate is not to protect investors from all forms of loss. At a certain point, an individual investor must be allowed the opportunity to make his or her own financial decisions. For this reason, the writer is sensitive to the reality that an investor who chooses to invest a significant portion of his or her wealth into a given exempt market investment should not be precluded from making such a decision.

In short, the writer feels that if an individual investor is going to invest such a substantial sum of money in an exempt-market investment, such investor should bear some responsibility for protecting himself or herself. Additional safeguards espoused in the Consultation Note such as measures based on a percentage of an individual’s portfolio size and/or net worth only serve to diminish the advantage of the minimum amount exemption: simplicity. As a result, the writer re-iterates that the minimum amount exemption should be retained in its current form.

B. Accredited Investor Exemption

As noted above, the writer takes the position that the accredited investor exemption should be retained in its current form with some modification. The writer recommends an expansion of the definition of “accredited investor” to include a person who satisfies the definition of “eligibility advisor” within the meaning of NI 45-106. The writer wishes to comment on the following discussion points raised in the Consultation Note:

1. Modification of the current financial thresholds for accredited investor status; and
2. Creation of an additional qualification based upon education and/or experience in the financial industry.

Financial Thresholds

Speaking to the current financial thresholds set out at subsections (j) through (m) of the definition of “accredited investor” in NI 45-106, the writer is of the opinion that such thresholds should be retained in

their current form. In respect of the net income requirement, the writer notes that the median household income of a Canadian household, in 2009, was approximately \$63,000.00. In Saskatchewan, the median household income, for 2009, was approximately \$70,790.00 (source: Statistics Canada). Therefore, the writer is of the opinion that the existing \$200,000.00 or \$300,000.00 income requirement is a sufficient protection to those investors relying on such exemption.

Education and Work Experience

Turning to the creation of an additional qualification for accredited investor status, the writer is of the opinion that those persons who qualify as “eligibility advisors” within the meaning of NI 45-106 should be allowed accredited investor status. To be clear, the writer is not advocating that a person need both education and/or experience in addition to the income and/or net worth requirements already set out in NI 45-106. Rather, the writer is suggesting an alternative means of qualifying as an accredited investor.

Generally, an eligibility advisor encompasses an investment dealer, a lawyer or an accountant (as more specifically described in that definition in NI 45-106). Generally, a person who consults with an eligibility advisor will satisfy the test of an eligible investor. Furthermore, a registered charity can satisfy the criteria of being an accredited investor if it has obtained advice from an eligibility advisor [see paragraph (r) of the definition of “accredited investor” in NI 45-106]. If the advice given by an eligibility advisor to a third party is sufficient to allow the third party to satisfy the criteria of being an accredited investor then why should the eligibility advisor himself/herself not hold the status of being an accredited investor?

In the writer’s own practice, the accredited investor exemption is often used by clients. In the writer’s opinion, if you were to increase the financial thresholds for the accredited investor exemption, that would detrimentally affect the ability to raise capital under this exemption.

Separate and apart from this, if the concept behind the accredited investor exemption is that the investor “should be able to protect himself/herself” then there should be no logical reason not to expand the scope of the accredited investor to a pool of investors who satisfy certain educational criteria, such as the eligibility advisor.

In conclusion, the writer is of the opinion that the accredited investor exemption should be retained in its current form, subject to the addition of including eligibility advisors as accredited investors.

Thank you for inviting comments on these exemptions. If you or any of your officials wish to discuss this matter, kindly contact me at your convenience.

Yours Truly,

STEVENSON HOOD THORNTON BEAUBIER LLP

Beaty F. Beaubier

Per:

Beaty F. Beaubier

BFB/jag

Cc: Dean Murrison, Saskatchewan Financial Services Commission, dean.murrison@gov.sk.ca

S:\LESLIE\beaty\Submissions to Securities Commission - Investor Exemption (2012)\Securities Commissions Letter-2012-03-08.doc