

March 12, 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**

Dear Sirs:

**Re: Review of Minimum Amount and Accredited Investor  
Prospectus Exemptions in National Instrument 45-106  
Prospectus and Registration Exemptions ("NI 45-106")**

Thank you for the opportunity to comment on the review of the above-referenced exemptions by the Canadian Securities Administrators ("CSA"). We have reviewed the CSA Staff Consultation Note 45-401 and have the following observations.

With respect to the minimum amount exemption specifically, we agree that the ability to invest \$150,000 does not necessarily correlate to investor sophistication. However, an investor capable of making a one-time investment of this magnitude would also have the financial ability to avail him or herself of the resources necessary to make an informed investment decision. In addition, in our experience, investors relying on this exemption are better able to withstand the loss of the investment.

We are of the view that a \$150,000 minimum remains a difficult threshold to overcome, and find that this exemption is not commonly relied upon in Saskatchewan. Further, we question whether merely raising the minimum investment amount serves to alleviate the concerns that have been raised with respect to

**Error! Unknown op code for conditional.**

March 12, 2012

Page 2

this exemption (i.e. linking the investment amount to sophistication).

With respect to the income requirements associated with the accredited investor exemption, we find that these thresholds also present a genuine hurdle for potential subscribers. This exemption is among the most widely used in Saskatchewan. We suggest that raising the limit significantly would have a substantial negative impact on capital raising markets in Saskatchewan for non-reporting issuers.

Rather than respond to each question set forth in the Staff Consultation Note, we would prefer to address the sub-lists contained within each question, which asks if our opinion regarding both exemptions would change if:

1. *any disclosure is provided to investors, including risk factor disclosure?*

Save for the offering memorandum ("OM") exemption, the very basis of prospectus-exempt investments is that eligibility is not based on or created by disclosure. We suggest that implementing risk factor disclosure would present a fundamental conceptual change to these exemptions. The possibility of adding a disclosure element raises the question – what level of disclosure would be required? If it is close to OM-level, why maintain an exemption separate from the OM exemption? If it is less than OM-level disclosure, will it offer any added protection to the subscriber or just create reliance on less than complete information and lead to more misrepresentation claims by investors? In addition, NI 45-106 would have to be revised to set forth the exact disclosure that is required.

2. *the security is novel or complex?*

The only way we see this as be a viable qualification is if NI 45-106 were revised to include an exhaustive list of the type of security that was considered novel or complex. A subjective "complexity test" would create nothing but uncertainty among issuers, advisors and subscribers.

3. *the issuer of the security is a reporting issuer?*

March 12, 2012

Page 3

We are of the opinion that this would obliterate the prospectus-exempt capital-raising market in Saskatchewan.

4. *A registrant is involved in the distribution who has an obligation to recommend only suitable investments to the purchaser?*

We question the practicality of requiring an otherwise-disinterested registrant to provide suitability advice. Why would any registrant subject itself to this potential liability?

In addition to the above, we wish to address the suggested alternative criteria for individuals relying on the accredited investor exemption: investment experience; investment portfolio size; work experience and education. Generally, any of these would exacerbate the current issue of ensuring compliance with the qualification criteria. Other than portfolio size, how would an issuer determine a subscriber's adequate work experience? Offloading this verification to a third party to certify does little to change the difficulty of making such a determination. Absent an objective test in NI 45-106 on this matter, we cannot see ever agreeing to provide such a certificate.

In conclusion, we suggest that the current requirements for both exemptions in question already provide a substantial threshold for potential investors to overcome. We are in line with both the United States and the United Kingdom. We do not advocate a change to either exemption.

Yours truly,

**Wallace Meschishnick Clackson Zawada**

*"Wallace Meschishnick Clackson Zawada"*