

May 12, 2014

denise.weeres@asc.ca
cours@lautorite.qc.ca

[consultation-en-](#)

Denise Weeres
Beaudoin
Manager, Legal, Corporate Finance
secrétariat
Alberta Securities Commission
financiers
250 – 5th Street SW
étage
Calgary, Alberta T2P 0R4
Bourse

H4Z 1G3

and

Me Anne-Marie

Directrice du

Autorité des marchés

800, square Victoria, 22e

C.P. 246, tour de la

Montréal, Québec

comments@osc.gov.on.ca

The Secretary
Saskatchewan
Ontario Securities Commission
Authority
20 Queen Street West
Drive
22nd Floor
4H2
Toronto, Ontario M5H 3S8

and

Government of

Financial and Consumer Affairs

Suite 601, 1919 Saskatchewan

Regina, Saskatchewan S4P

Re: CSA Proposed Amendments Relating to the Offering Memorandum [Exemption](#)

Dear Sirs/Madams:

I am writing to comment on the proposed amendments to NI 45-106, in particular the proposed annual investment limits for non-accredited investors.

As a seasoned financial planner and investment advisor with 24 years of experience in the industry, I believe that this proposal has many negative consequences and many flaws, and therefore, I am greatly concerned with it. My concerns are based on a number of factors, of which this letter will elaborate on only a few of the more important points.

The Nature of Investments:

Unfortunately, there are risks associated with every investment, including those that are generally viewed as being “risk-free”, such as GIC’s and Treasury Bills. Over the years, I have witnessed a large number of failures and disappointments regarding a variety of investments. Most of these have been publicly-traded investments, and not private investments. The causes for failure or disappointments have ranged from changes in the economy, market corrections, poor management and decision making by management, unforeseen delays, cost overruns, incompetence, unrealistic projections, fraudulent activity, and outright scandals. We have all seen and experienced losses from publicly-traded investments such as Bre-X, Enron, WorldCom, Nortel, Viterro, BlackBerry, hundreds of dot.com & high-tech companies, thousands of junior oil & gas and mining companies, as well as many labour-sponsored venture funds such as Medical Discoveries Fund, GrowthWorks and the Crocus Fund. Losses from these examples are enormous! Investors have experienced significant losses during the October 1987 crash (Black Monday), the Latin American crisis in 1992, the Asian crisis in 1997, the Dot.com (High Tech Bubble) crash in March of 2000, and the Financial Crisis of September 2008. I have also seen losses associated with private investments; however the numbers of failures and the amounts of dollars lost are dwarfed by those involving publicly-traded investments.

While I am not surprised that limits have never been imposed on publicly-traded investments (as this is not an appropriate solution), I am surprised that the CSA is considering this to be an appropriate action for private investments.

Diversification:

It is widely accepted knowledge that diversification has the effect of lowering the overall risk of a portfolio. Based on my years of experience and the on-going industry-related education that I have received, I believe deeply in this concept. The exempt market and private equity offers investors with the greatest opportunity for diversification. Over the course of the last decade, we have witnessed a convergence of patterns from most stocks, mutual funds, ETF’s and public indices. This has caused the various public markets and publicly-traded investments to become much more correlated than in previous decades, and this has created great difficulties in achieving a high level of diversification using these types of investments. The inclusion of exempt market and private equity investments in a portfolio can be used effectively to create that much-required diversification. Limiting the amount an investor can invest in private equity and exempt market products would have the unfortunate effect of reducing the level of diversification that investors are now beginning to enjoy. Exempt market & private equity investments tend to have much lower correlations to each other, and therefore provide the greatest level of diversification that can be achieved.

The Importance of Small Business:

According to Stats Canada, small businesses account for the vast majority of new employment opportunities in Canada, and also account for a large portion of our GDP and growth. Small businesses are dependent on having access to capital, and the traditional methods of securing capital are often restricted or simply not available to them. The exempt market / private equity markets provide another avenue for small businesses to obtain capital. Imposing an arbitrary investment limit on private equity would eliminate a very key option for small businesses to attract capital, and would jeopardize the viability of many small businesses. This would not be healthy for the Canadian economy.

Current Regulatory Environment:

The Exempt market industry took a huge positive step in September 2010, when NI 31-103 was implemented. This new regulatory platform brought the activity of the exempt market to the same levels that the MFDA and IIROC have for the mutual fund and stockbrokerage industries. Under NI 31-103, all sales of exempt products must be made through an approved Exempt market dealer (EMD), who has compliance, administrative, reporting and due-diligence responsibilities. The advisors must be licenced, and are required to provide advice to their clients using KYC's, a full and detailed understanding of the products that they are recommending, and ensure that every recommendation made is suitable for that particular investor. Suitability and appropriateness of each transaction is a critical responsibility of the advisor, as well of the compliance department of the various EMD's. Product knowledge and on-going education is also critically important and rules are put in place by various EMD's to ensure that advisors have sufficient training in this area.

It would appear to me that proper rules and regulations have already been put in place to regulate the activities of EMD's and their dealing representatives. The issue appears to be the lack of regulations and enforcement concerning the investment companies that are providing the various exempt market products. In my view, I do not see significant enforcement from the various regulatory bodies concerning the investment companies that do not adhere to their mandates and promises. I also do not see significant consequences to the investment companies if they do not adhere to their mandates. I do not see significant consequences to investment companies for fraudulent activities or for out-right scandals. Investment failures are most often due to these factors. Imposing arbitrary investment limits to investors would have no impact on reducing investment failures.

Investor's Rights:

Our Canadian constitution is written to ensure that every Canadian has a right of choice, a right to make their own decisions, and the right to succeed or to fail. Canadian investors have the right to choose how they should invest their own money. Setting an arbitrary investment limit serves no real value, and infringes on Canadian's rights.

The proposal CSA limits of \$30,000 per investor per year is insulting and assumes that all investors need to be protected from themselves. This proposed legislation assumes that all investors are incapable of making an informed and wise investment decision, and that all licenced advisors make unsuitable recommendations to their clients. This is simply not the situation at all!

The proposed limit makes no differentiation from an individual with \$50,000 of financial assets from one which has \$980,000. How can a \$30,000 per year limit be beneficial to the astute investor who has significant dollars to invest? The proposed limits will force investors to place the bulk of their dollars into the highly-volatile, and poor-performing stock market; bonds which are at risk as interest rise; or into extremely low-interest GIC's (paying at rates that are less than the inflationary rate). What right does the CSA have to force investors to invest the bulk of their dollars into these options? Who will be responsible for poor performance or losses incurred from these "forced" choices? This proposed legislation would expose the CSA and regulatory bodies to potential litigation from disenchanted investors who have been forced to invest against their wishes. It would serve no value and infringes on our rights as Canadians.

Industry trends:

Many pension funds in Canada and the U.S. have been gradually changing their investment strategies over the course of the last decade to include a substantial amount of private equity. Pension funds are faced with deficits and shortfalls. Actuaries are scrambling to correct these deficiencies. The obvious solution for many pension funds has been to invest in private equity, real estate, MIC's, REIT's, and other alternative investment opportunities; the same type of opportunities that exempt market investments provide for individual investors. Pension funds such as OMERS, Harvard, and Yale, to name a few, have been active in reducing their exposure to the traditional stocks and bonds, and have been elevating the composition of their funds to include more private equity, real estate and other alternative investments. A recent article in the Globe & Mail, dated January 10, 2014, reinforced the fact that pension funds are increasing their exposure to private equity and real estate, stating that in 2013, this proportion had climbed to 38% amongst Canadian pension plans. Obviously these pension funds have done their homework, and view these changes to be beneficial. It would appear to me that what is good for pension funds, which tend to be conservative in nature, is also likely to be advantageous for average individual investors. The exempt market allows average investors to invest in a similar manner to many pension funds.

Recently, the Walton International Group, an investment company offering land investment opportunities that are exempt for prospectus filing, have announced that they have entered into an agreement with CPP. It appears that CPP will be investing a portion of its portfolio into the Walton land opportunities, signifying another example of the current trend towards private equity and exempt market products. Again, one would have to assume that those involved with the management of CPP have likely performed a significant amount of due-diligence before venturing in this direction.

In closing:

I cannot think of one good reason for the CSA proposal to impose annual limits for non-accredited investors. For the reasons outlined above (and many others), this proposal can be described as senseless, and without proper consideration. This proposal would have the effect of moving the industry in a backwards direction, and would have many detrimental consequences. I am very much opposed to it, and urge that it be shelved indefinitely.

This submission is being made on my own behalf.

If you would like further elaboration on my comments, please feel free to contact me.

Regards,

Jack Comeau

Jack Comeau, BSA, ChFC, CLU, CIM, CEBS
Dealing Representative
Registered with Pinnacle Wealth Brokers

Comeau Financial Inc
Telephone: 1-306-986-9011
Toll Free: 1-877-300-3891
Cell: 1-306-221-0445

Facsimile: 1-306-979-0586

E Mail: jack@comeaufinancial.com

jack@comeaufianncial.com

CC:

Cora Pettipas

Vice President, National Exempt Market Association

cora@nemaonline.ca

This e-mail message (including attachments, if any) is intended for the use of the individual or entity to which it is addressed and may contain information that is privileged, proprietary, confidential and exempt from disclosure. If you are not the intended recipient, you are notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please notify the sender and erase this e-mail message immediately.