CAWKELL BRODIE LLP

G E N E R A L L E G A L C O U N S E L

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VIA EMAIL

British Columbia Securities Commission
PO Box 10142, 701 West Georgia Street
Vancouver, BC
V7Y 1L2
Attention: Leslie Rose, Senior Legal Counsel, Corporate Finance (lrose@bcsc.bc.ca)

cc: Ontario Securities Commission, Secretary (comments@osc.gov.on.ca)
Autorite des marches financiers, Anne-Marie Beaudoin (consultation-en-cours@lautorite.qc.ca)

Dear Ms. Rose:

Re: Comment Letter on CSA Notice and Request for Comments dated February 27, 2014
Proposed Amendments to NI45-106 Accredited Investor ("AI") & Minimum Amount ("MA") Exemptions and 45-106F1/F6 Report of Exempt Distribution (the "Reports")

We act as counsel to a number of TSX Venture Exchange listed clients and private companies, which includes a number of early stage companies in the technology, biotech and mining fields, many of whom rely on the accredited investor exemptions.

By way of this letter we summarize our comments and concerns with respect to the proposed amendments set out in the subject Notice and Request for Comments ("RFC").

MINIMUM AMOUNT EXEMPTION (MA)

For any investors we have dealt with, $150,000 remains a significant amount that *is not invested without due care and attention.* While the ability to invest $150,000 may not guarantee a level of sophistication, it is a good indicator that the investor has significant resources, and may avail themselves of investment advice should they choose to do so. This is equally true for individual investors as it is for non-individual investors.

Limiting the MA exemption to non-individual investors (primarily, companies) will not address the concerns with respect to sophistication and risk associated with the investment. In our experience, many non-individual investors in small to mid-size issuers are simply individuals subscribing through a private holding company. The presence of a holding company is no more reliable as an indication of sophistication than if the individual subscribes directly.

If it is the intention of the proposed amendment to restrict the exemption to larger corporate or institutional investors, such as venture capital companies or funds, such a move would render the MA exemption unavailable to smaller issuers who are generally unable to attract such investors, most of whom prefer to invest in more established companies, typically, after a proof of concept or a certain milestone has been achieved.

Limiting the exemption to non-individuals does not address the Commission's concerns with respect to sophistication or risk tolerance, and will be detrimental to smaller issuers who would be shut out of a significant source of funding.

Thus, it is our submission that the MA exemption should remain unchanged.

ACCREDITED INVESTOR EXEMPTION (AI)

Individuals - Our concerns with respect to the assumption that a non-individual investor is more sophisticated than an individual investor apply equally to the proposed amendments to the AI exemption as they do to the proposed amendments to the MA exemption.

Although the Companion Policy only lists paragraphs (j), (j.1), (k) and (l) of the definition of "accredited investor" as categories available to individuals, it is our interpretation that (e) is an individual and categories (d), (q) and (v) may be an individual, and as such are subject to s. 2.3 (6). For clarity, it is our suggestion that paragraph s. 2.3 (6) and (7) be re-phrased so as to specify which categories require the 45-106F9, rather than simply referring to an individual. Additionally, it should be clearly stated that the requirement to complete 45-106F9 does not apply to any salesperson or finder, whether registered or not, as indicated in the RFC.

45-106F9 Risk Assessment Form – This form alone will not increase an investor's ability to discern if the investment is appropriate for them. For the vulnerable investors it is intended to protect, there is a danger of it becoming additional paperwork to be signed and returned along with subscription agreements, without reading or increased comprehension.

The majority of the proposed form is already included in a subscription agreement. A simple statement that the investor acknowledges and agrees that he/she/it could lose all of the investment, and that there is no guarantee of any return on the investment should be sufficient:

"I acknowledge that this is a risky investment and that I could lose all the money I invest."

At most, the proposed form need only be Item 1 – Acknowledgement of Risk. Item 5 is disclosure between the broker/finder and the investor; the issuer need not be involved. If this from is aimed at unsophisticated investors, keep it simple, and translatable.

Alternatively, simply require specific representations or acknowledgements in writing, which could be incorporated into the subscription agreement, without stipulating a required form and procedure.

The requirement that the form must be presented in duplicate on one double sided page and an original delivered to each party is frankly ridiculous. Printing double sided offers the investor no greater protection than if printed on single sheets. It is an antiquated approach - it assumes paper delivery in person (very rare in this age of electronic delivery) and only adds to the administrative burden.

Retention of Records – It is not clear what concern is being addressed or alleviated by this proposal. Subject to doing away with the form altogether, it is our opinion that the requirement to retain the risk acknowledgement form for 8 years, is excessive and overly cautious. The Law Society of British Columbia requires that records with respect to a financing are retained for 6 years. Similarly, the CRA requires records retained for 6 years. We propose that 6 years is more appropriate and in keeping with existing administrative burdens on the issuer.

Family Trusts – We agree with the expansion of the accredited investor definition to include family trusts; however this category should be treated similarly to an individual. As with an individual's holding

company, the presence of a Trust is not necessarily an indication of greater sophistication, risk awareness, or appropriateness of the investment.

Ontario – The general purpose of a unified national instrument is to simplify and standardize securities regulation across Canada. To allow Ontario to "opt out" of the standardized definition of AI would be counterproductive to this goal.

Companion Policy – We accept that an issuer should reasonably believe that the investor is entitled to the exemption, however to require an issuer to obtain personal details of the financial situation of the investor is excessively invasive and certainly a significant invasion of privacy.

The subscription is a contract between the investor and the issuer, the issuer is absolutely entitled to rely on the representations, warrantees and certifications of the investor contained in the contract. Similarly to the common law "indoor management rule", unless put on notice of a problem, no extraordinary steps need to be taken. ***If the investor is able to make such representations and certifications, it should not be an issue***.

Also keep in mind that the issuer often is working through an intermediary to contact an investor. Time and resources limit the amount of due diligence an issuer is able to complete on each investor. The implementation of formal policies and procedures will create an administrative burden for most small issuers. To request additional personal details such as income tax returns and bank statements may be a barrier to participating for some investors.

Thus, it is our submission that the negative effect of potential loss of investors and the increased administrative burden on issuers far out-weighs any mitigation of the concerns raised with respect to investor sophistication, risk awareness, or appropriateness of the investment that may result from the proposed changes to the AI exemption.

<u>45-106F1/F6</u>

Information such as address, telephone number and email, AI category, or to link finders with investors ***must not be public***. We appreciate that such additional information is important for the Commission compliance and data gathering purposes, and agree with providing it to the Commission, but not to the public. The current form 45-106F6 already makes too much information public for non-individual investors.

It is unclear what the Commission is seeking to achieve by making this information public. Shareholder information is always confidential. Why is it different for an exempt distribution? What public good does it serve? If it is to enable to public to follow or copy the investments of another individual, without knowledge of their motive for purchasing or sale history, this is not a good indicator that it will be a suitable or profitable investment for the investor, or a prudent investment strategy. The Commission should not be encouraging such behavior.

Most finders we interact with are individuals or small enterprises and most non-individual investors are small holding companies, rather than VCCs or institutional investors / brokerages. For these finders and investors, to have such personal details be public can be counterproductive to the protection of the investors or finders, and indeed may actively increase the risk of them being contacted or targeted by members of the public.

Thus, it is our submission that personal information should remain private and confidential.

CONCLUSION

The benefits for the capital market, issuers, and investors of the AI and the MA Exemptions far outweigh the risks. Both exemptions fulfil an important role in the business community in Canada. The proposed changes could seriously hamper the ability of small to mid-size issuers, both public and private, to obtain the vital funds needed to stay in business and support economic growth, without necessarily increasing investor protection.

Kenneth A. Cawkell
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