

May 8, 2014

BY EMAIL

British Columbia Securities Commission
Alberta Securities Commission
Financial and Consumer Affairs Authority (Saskatchewan)
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
Financial and Consumer Services Commission (New Brunswick)
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island
Nova Scotia Securities Commission
Securities Commission of Newfoundland and Labrador
Registrar of Securities, Northwest Territories
Registrar of Securities, Yukon
Superintendent of Securities, Nunavut

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-and-

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Me Anne-Marie Beaudoin
Corporate Secretary
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Dear Sirs/Mesdames:

Re: CSA Notice and Request for Comment - Proposed Amendments to National Instrument 45-106 *Prospectus and Registration Exemptions* Relating to the Accredited Investor and Minimum Amount Investment Prospectus Exemptions (the "Notice")

The Canadian Advocacy Council¹ for Canadian CFA Institute² Societies (the CAC) appreciates the opportunity to comment on the Notice and wishes to provide the following general comments on the proposed amendments to the accredited investor and minimum amount investment prospectus exemptions.

As a general comment, we believe that investor protection in the exempt market is best enhanced by providing clear risk disclosures, taking some steps to verify eligibility to participate in the market, and limiting percentage of investor net worth invested in any one security. We do not believe that any particular threshold of wealth or income implies sophistication or lesser need for protection.

With respect to the accredited investor exemption, we support the proposed changes relating to the family trust definition, as well as the addition of managed accounts selling investment fund securities by the Ontario Securities Commission. We also support the requirement for investors to sign a risk acknowledgement statement, however we do not think there should be a carve out for permitted clients. Simply being an accredited investor or a permitted client is not in all cases a proxy for investor sophistication. As the CAC noted in its previous comment letter to the CSA with respect to its earlier review of the minimum amount and accredited investor exemptions, we do not believe that possessing investable assets above a certain threshold implies sophistication, lottery winnings and inheritances being just two examples of how that threshold could be reached by unsophisticated investors. We do not believe that either an asset test or an income test is sufficient to determine which investors have better access to information and are sophisticated enough to not require as much protection as others.

We believe that in order to assist investors (and their advisors) to determine the suitability of any particular investment, it would be beneficial if an investor was required to specify on the risk acknowledgement form whether the investment represented a relatively small (e.g. up to 10%) percentage of the investor's net assets (excluding their primary residence). While the specific percentage that may be suitable for any particular investor will vary based on individual circumstances, requiring an investor and their advisors to specifically turn their minds to the investor's entire financial position may help determine whether additional scrutiny of the particular investment is warranted. At the very least, requiring investors to turn their minds to the size of the investment as a percentage of their net assets would help remind them of the potential risk they are accepting. The complexity of determining the suitability of an investment for any particular investor reinforces the need for registered dealers and advisers to perform a thorough analysis on

¹The CAC represents the 13,000 Canadian members of CFA Institute and its 12 Member Societies across Canada. The CAC membership includes portfolio managers, analysts and other investment professionals in Canada who review regulatory, legislative, and standard setting developments affecting investors, investment professionals, and the capital markets in Canada. See the CAC's website at <http://www.cfainstitute.org/cac>. Our Code of Ethics and Standards of Professional Conduct can be found at <http://www.cfainstitute.org/ethics/codes/ethics/Pages/index.aspx>.

² CFA Institute is the global association of investment professionals that sets the standard for professional excellence and credentials. The organization is a champion for ethical behavior in investment markets and a respected source of knowledge in the global financial community. The end goal: to create an environment where investors' interests come first, markets function at their best, and economies grow. CFA Institute has more than 119,000 members in 147 countries and territories, including 112,000 CFA charterholders, and 143 member societies. For more information, visit www.cfainstitute.org.

the product, and for those dealers and advisers to have the necessary experience and educational background to provide such tailored advice.

We are also of the view that the risk acknowledgement form would be enhanced if the investor was required to identify whether or not the registrant, if any, that was involved in the trade recommended the investor borrow money for purposes of making the investment. This information could also be required to be included on the exempt trade report for research purposes.

In addition, the statement to the effect that the investor will not have the benefit of certain protections under securities law would be enhanced to the extent that those specific protections were explicitly listed. As an example, in the Nova Scotia Securities Commission Policy 45-601 – *Community Economic Development Investment Funds*, the offering documents used in the distribution of securities under the exemption must contain a warning with specified information about protections that would be forfeited when investing in a fund that did not have a registered investment fund manager, including the lack of experience and education requirements, reporting requirements, minimum working capital, insurance, and compliance reviews. We believe it would enhance investors' understanding of risk if the protections foregone by not using a prospectus were similarly explicitly listed in the risk statement for exempt securities.

The CAC agrees that the proposed additional information to be contained in the exempt trade report will be useful information for the regulators and should not be unduly burdensome for issuers to provide. We also believe that some of the steps outlined in the proposed changes to the Companion Policy in connection with verifying the status of a purchaser as an accredited investor should be included in the National Instrument itself, rather than as guidance only. The exempt trade report could then contain a box that the issuer could check confirming that they have taken the steps appropriate in the circumstances to verify the purchaser qualifies as an accredited investor.

With respect to the minimum amount investment prospectus exemption, we would support the removal of the exemption in its entirety, instead of limiting the exemption to non-individual investors. The commentary in the Notice provides that some compliance staff have noted that problems in connection with the use of the exemption include situations where the investment is not suitable for the investor, or where investors are otherwise pressured to invest \$150,000 to participate in the opportunity when the investor would rather invest less. Those concerns apply equally to various entities, particularly closely-held small corporations, as they do to individual investors, and there is no policy reason to differentiate investor protection measures among such investors. In addition, we are of the view that simply being able to invest \$150,000 in any one particular investment does not necessarily imply investor sophistication or an enhanced ability to access information about the issuer. As the sole criteria, the amount of the investment does not address any potential issues related to the issuer itself or the risk level or liquidity of the security, and as a result should no longer form the basis of a stand alone prospectus exemption. The availability of a prospectus exemption should be tied to the characteristics of the investor and/or the security, not the amount of cash the investor is able to pull together for one investment.

As a general note, we wish to stress the importance of harmonizing the prospectus exemptions across all Canadian jurisdictions, and would encourage all of the jurisdictions to minimize local amendments to the extent possible.

We support the CSA initiative that is currently underway with respect to potentially imposing a fiduciary duty on registrants, and strongly support imposing a statutory best interest standard on registered dealers providing advice to clients, including exempt market dealers providing advice on

privately placed securities. Even where investors are asked to sign a risk acknowledgement statement, we are of the view that retail investors rely primarily on their advisers to let them know if the investment is appropriate for their level of risk tolerance. When relying on an adviser, investors already assume that the adviser is looking out for their best interests. The assumption should match an adviser's legal obligations. Such a standard, if implemented formally, would help to ensure that an investment in privately placed securities is in fact in a client's best interests, which would materially enhance investor protection.

Concluding Remarks

We thank you for the opportunity to provide these comments. We would be happy to address any questions you may have and appreciate the time you are taking to consider our points of view. Please feel free to contact us at chair@cfaadvocacy.ca on this or any other issue in future.

(Signed) *Ada Litvinov*

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