

May 21, 2014

**DELIVERED VIA 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

Dear Sirs/Mesdames:

**RE: CSA Notice and Request for Comment on Proposed Amendments to National Instrument 45-106 *Prospectus and Registration Exemptions* Relating to the Accredited Investor and Minimum Amount Investment Prospectus Exemptions  
February 27, 2014**

**Introduction**

We appreciate the opportunity to participate in the consultation process and hope that our input is helpful to your considerations.

**Executive Summary**

As advisors to many emerging technology companies and investors in those companies, we are well aware of the importance for Canadian companies to be able to raise funding without having to face an unreasonable and burdensome regulatory environment. It is also important that Canadian companies be on a level playing field with companies raising capital in the U.S., as companies often compete for funding in a North American context.

From our experience, we have found that the accredited investor exemption (the “**AI Exemption**”) works well and we have not observed any abuses. While not identical, this exemption is reasonably consistent with a similar exemption available in the U.S., which is important. We see the AI Exemption as being critical to cost-effective fundraising by early stage and venture-backed technology companies. In our comments below, we encourage the CSA to maintain the exemption and refrain from adding what we

believe are unnecessary burdens to companies seeking to rely on it. We are well aware of the need for, and support the inclusion of, appropriate investor protections, but these must be balanced with the policy objective of capital formation.

We do not propose to comment on proposals to amend the minimum amount investment exemption.

Our submissions are consistent with our comments provided February 29, 2012 in response to your previous request for comment on the same matters.

## **Our Experience**

We are a global law firm with active venture capital and technology practices in each of our six offices in Canada and our other offices around the world. Lawyers in our firm deal regularly with capital formation at all levels from start-up through angel and seed funding, venture capital financing and public offerings. It is clear in our experience that capital is increasingly difficult to attract for start-ups. Where “Series A” rounds might have been fairly broadly available from Canadian venture capitalists and U.S. venture capitalists five to ten years ago, they are increasingly less common. As a result of the scarcity of “Series A” financing rounds, start-ups are increasingly required to rely on angel or seed funding, which by definition require them to seek financing from multiple sources in order to raise the necessary funding to develop and market innovative products. Increasingly, we also see the need for Canadian companies to raise funding from U.S. investors.

## **Our Submissions**

### *Proposed Amendments to the AI Exemption*

1. We support your proposal not to change the income or asset thresholds used in the definition of accredited investor.
2. We support your proposal to require that individual accredited investors sign a new risk acknowledgement form, Form 45-106F9.
3. We strongly recommend that proposed changes to the guidance included in the Companion Policy be clarified so that it is clear that the issuer is only required to take additional steps to verify income or asset information supporting accredited investor eligibility if the issuer has reasonable cause to believe that the accredited investor does not meet the applicable test. While the final paragraph of Section 1.09 of the amended Companion Policy seems to infer that this is the case, we are concerned that the earlier provisions contained in Section 1.09 of the amended Companion Policy may create an obligation on the issuer in all cases to obtain and review supporting financial information which, if this is the intention, would, in our view, severely constrain angel investing in particular as many angels will not be willing to divulge such personal financial information. With particular reference to the paragraph entitled “Verify the purchaser meets the conditions of the exemption” and reliance on the purchaser’s financial circumstances, it should be clarified that if the purchaser confirms in the Risk Acknowledgment Form that their income exceeds the minimum required or their “financial assets” or “net assets” exceed the

minimum required, no further verification is necessary unless the issuer has reason to believe that the confirmation received is not correct.

We also suggest that the policy objective of investor protection should be applied broadly to include protection of the investor's privacy and personal information. The type of financial information required to verify accredited investor status is highly sensitive. Issuers, particularly those at an early stage, are not necessarily equipped to adequately protect sensitive information from loss, theft or unauthorized use. These risks cannot be completely mitigated through legal or contractual confidentiality requirements, noting that even government authorities experience information security breaches that result in inadvertent disclosure of personal information. We believe that any additional verification measures over and above self-certification should be rigorously reviewed through a privacy lens, both to ensure that measures are "minimally invasive" as a matter of principle and that securities regulation is not encouraging a proliferation of highly sensitive personal financial data.

4. We strongly support the amendment of the AI definition to include family trusts. Many investors do choose to invest through a family trust.

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We would be pleased to answer any questions you may have on our submission. You may contact Tom Houston at (613) 783-9611 (tom.houston@dentons.com), Andrea Johnson at (613) 783-9655 (andrea.johnson@dentons.com) or Lara Vos Smith at (613) 783-9654 (lara.vossmith@dentons.com).

Yours truly,  
**Dentons Canada LLP**

*"signed"*

Tom Houston

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