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**À :** denise.weeres@asc.ca; Consultation-en-cours; comments@osc.gov.on.ca

**Cc :** cora@nemaonline.ca

**Objet :** Re: CSA Proposed Amendments Relating to the Offering Memorandum Exemption

**Importance :** Haute

June 1, 2014

Dear Madams:

Please accept this letter as my commentary on the proposed amendments to NI 45-106, in particular the proposed annual investment limits for non-accredited investors.

As a Dealing representative for one of Canada's premiere Exempt Market Dealerships I've received numerous comments and concerns from both my colleague's and from my clients regarding the investor limitations proposed in your amendment. One of the main reasons clients feel comfortable talking to me about their concerns is the depth of relationship we've achieved through a combination of the KYC process and an ongoing determination of client and product suitability.

Having the financial wherewithal to invest does not automatically make someone a suitable candidate to invest in the Exempt market, and enacting regulation that assumes accredited investors are sophisticated while eligible investors need mandated investment limitations is not only inaccurate, but in the end creates a have & have-not class structure that will ultimately harm the investor you're trying to protect.

As a result of a suitability analysis, I often find myself telling a client that I felt a product was unsuitable for their current needs and have re-directed them to one that met their current and forecasted needs even when it delivered a lesser return, and when the client felt strongly about their initial choice. In some cases after getting to know a prospect and their situation, (accredited included), I've had to tell them that the Exempt market was not right for them and suggest they not invest in it at all.

Proper suitability analysis, (*not a check the box exercise*) is the key to correctly educating and mitigating risk for an investor regardless of their exempt qualification.

When a suitability analysis is done correctly and the client deemed suitable, then the Exempt Market is a fair opportunity for any investor. It then becomes incumbent on the Dealing Representative to ensure that private investments are used as a compliment to their clients existing portfolio not a wholesale replacement. That ongoing risk mitigation should be achieved through diversification both in sector, geography, industry and market ... not by an imposed product and/or annual investment limitation.

In fact I see the proposed limitation inadvertently resulting in a reduction of investor protection as some advisors, (particularly in EMD's that sell their own products) choose to interpret the regulated limitations as built-in client protection with no suitability determination needed afterwards!

I believe the commissions intent is to better protect the investor, a noble and admirable objective, and the right thing to do. But should we limit the qualified investor's ability to improve their family's lifestyle because pre-legislation issues are just now coming to light?

The process that began by regulating the Exempt market for the protection of the average Canadian investor is clearly working!

It allows everyday eligible investors to strengthen their financial position and better equip themselves and their families to deal with unknown future financial events.

We see the positive economic impact most notably in the Western provinces for both the investor and in improved access to much needed capital for the backbone of small businesses essential to the health and economic growth of our country.

All new things such as Exempt market legislation have growing pains, and in Canada we have the added strain of multiple provincial Securities commissions without a single overseeing body.

However, as in any newly implemented plan, occasional tweaking and fine tuning designed to enhance opportunity and protect investors will be required. In doing so however we need to be sure we're making decisions based on the post-regulated environment, *the current landscape*, and not just reacting to a multitude of symptoms arising from a previously unregulated environment.

Again a proper determination of suitability done at the investor/advisor level is a proactive measure that goes directly to addressing the commission's concerns of protecting all investors. When done right the suitability process better educates the investor, slows down the investing process, allows for more prudent decision making and mitigates risk through a recognized need for proper diversification.

On the other hand a severely imposed investment limitation on a single class of investor, can only lead to the eventual loss of economic opportunity to the very people you're trying to protect.

We can site many occasions in the past, mostly painful, and sometimes debilitating, where the shotgun approach directed at the symptom didn't work. In the end we're always forced back again to look at what the underlying cause is, and to surgically deploy a means to root out and correct the problem and not just blast away at the symptom.

In this case I see the problem as a need to ensure a solid determination of suitability with each and every client, combined with an annual review to "adjust the sails" as required. In fact I believe that a suitability analysis by the commission *based on the current Exempt market environment*, vs a symptomatic reaction to the past, would bring you to the same conclusion and direct you to enact the type of change that enhances protection to the Canadian investor without imposing loss of opportunity on those who have earned the right to improve themselves.

In conclusion I respectfully submit that I am opposed to the proposed amendments to NI 45-106, in particular the proposed annual investment limits for non-accredited investors.

I believe the proposed amendments do not accurately address the needs of the Canadian investor, Canadian small business owners, nor adequately improve protection for the non-accredited investor.

I believe **an enhanced process of suitability**, along with a mandate that **an EMD cannot own a product nor have a product it has any financial ownership of on its shelf ...** will much better protect the needs of all investors both accredited and non-accredited alike.

I make this submission on my own behalf. If you would like to further discuss any of my above comments please feel free to contact me by email at [gfoley@raintreeemd.com](mailto:gfoley@raintreeemd.com)

Best Regards,

George Foley

Dealing Representative, Western Canada  
*GOLD LEAF Club- 2014*

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