



February 29, 2012

British Columbia Securities Commission
Alberta Securities Commission
Saskatchewan Financial Services Commission
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
New Brunswick Securities Commission
Superintendent of Securities, Prince Edward Island
Nova Scotia Securities Commission
Securities Commission of Newfoundland and Labrador
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Yukon Territory
Superintendent of Securities, Nunavut

c/o Gordon Smith
British Columbia Securities Commission
PO Box 10142, Pacific Centre
701 West Georgia Street
Vancouver, British Columbia
V7Y 1L2
Fax: 604-899-6814
e-mail: gsmith@bcsc.bc.ca

-and-

Anne-Marie Beaudoin
Corporate Secretary
Autorité des marchés financiers
800, square Victoria, 22e étage
C.P. 246, Tour de la Bourse
Montréal, Québec
H4Z 1G3
Fax: 514-864-6381
e-mail: consultation-en-cours@lautorite.qc.ca

Via e-mail

RE: CSA Staff Consultation Notice 45-401, Review of Minimum Amount and Accredited Investor Exemptions (the “Consultation Notice”)

This submission is made by the Business Law Section of the Ontario Bar Association (the “OBA”) in response to the request for comments published on November 11, 2011 (the “Request for Comments”) with respect to the Consultation Notice.

As the largest voluntary legal organization in the province, the OBA represents 18,000 lawyers, judges, law professors and students in Ontario. OBA members practice law in no fewer than 37 different sectors. More than 1,800 of these lawyers belong to our active Business Law Section, including those working in private practice, government, non-governmental organizations and in-house. This submission was prepared by the Securities Law Subcommittee of the Business Law Section. In addition to providing legal education for its members, the OBA has assisted government with several legislative and policy initiatives - both in the interest of the profession and in the interest of the public.

General Comment

The OBA supports the initiatives of the Canadian Securities Administrators (the “CSA”) in its attempts to address risks to investors in the capital markets and to ensure that any such initiatives are proportionate to the cost to industry and the restrictions such initiatives may impose on capital market participants. Given the current uncertainty in the world financial markets, and the corollary effect this is having on the raising of capital in Canada, the OBA is concerned about making any changes to the prospectus exemption regime in National Instrument 45-106 - *Prospectus and Registration Exemptions* (“**NI 45-106**”) that would make it more difficult for market participants to raise capital and for capital markets to function efficiently in the context of the investor protection mandate. By way of a general comment the OBA encourages the CSA to renew its efforts to harmonize the current exemptions that exist in NI 45-106, some of which contain some of the additional disclosure suggestions that have been referred to in the Consultation Notice, (e.g. s. 2.9 - the Offering Memorandum exemption and s. 5.2 the TSX Venture Exchange Offering).

The OBA also encourages the CSA and to continue to monitor compliance with the National Instrument 31-103 - *Registration Requirements, Exemptions And Ongoing Registrant Obligations* (“**NI 31-103**”), which incorporates the investor protection principles know-your-client (“**KYC**”), know-your-product (“**KYP**”) and suitability analysis. The OBA encourages the CSA to continue to harmonize the implementation of NI 31-103 so that it is applicable in all provinces and territories in Canada. The OBA notes that at this time British Columbia, Alberta, Saskatchewan, Manitoba and the three territories (the “**Northwestern Region**”) have all issued blanket orders in their jurisdictions exempting certain market participants from compliance with NI 31-103. The OBA encourages the CSA members to renew their discussion on NI 31-103 with a view to eliminating these blanket orders and thereby providing equal investor protection to all Canadians, no matter where they live.

SPECIFIC COMMENTS

Minimum Exemption Amount

The OBA does not recommend changing the threshold amounts on the basis that it would unnecessarily restrict the ability of Canadian investors to participate in exempt market product offerings and that would unnecessarily reduce the ability of market participants to access capital. While we note that most investors that rely on this exemption are also “accredited investors”, the OBA does not recommend eliminating of this exemption as there are certain situations where this exemption is of use.

Accredited Investor (“AI”) Exemption

The OBA does not recommend changing any threshold amounts in the AI exemption on the basis that it would unnecessarily restrict the ability of Canadian investors from participating in exempt market product offerings and that would unnecessarily interfere with the ability of market participants to access capital.

The OBA agrees the additional categories suggested in the Consultation Notice that recognize investor sophistication based on: (i) investment experience, (ii) work experience or (iii) education should be added as additional categories to the AI exemption. The OBA agrees with the CSA that investor sophistication has a much broader base than just wealth accumulation and that the addition of these categories to the AI exemption would enhance the AI exemption’s functionality for both investors and for market participants. The suggested categories in the Consultation Notice should not be looked as replacements for the current categories that are listed in the AI exemption, but as a way to extend the AI exemption.

The OBA also encourages the CSA to continue to monitor compliance with the KYC, KYP and suitability analysis provisions of NI 31-103 to ensure that investor protection is complied with at the investor and dealing representative level. The OBA encourages the CSA to renew its efforts to harmonize the exemptions that contain additional disclosure requirements such as the Offering Memorandum exemption and the TSX Venture Exchange Offering and to remove the registration exemptions with respect to NI 31-103 that exist in the Northwestern Region.

Thank you for this opportunity to comment. If you have any questions, please direct them to Philippe Tardif (416) 367-6060, ptardif@blg.com, Brian Prill (416) 596-2882, bprill@blaney.com or Barbara Hendrickson (647) 403-4606, barbara@millertiterle.com.

Yours truly,

A handwritten signature in black ink, appearing to read "Alexander J. Meier". The signature is fluid and cursive, with the first name "Alexander" written in a larger, more prominent script than the last name "Meier".

Chair, Business Law Section
Ontario Bar Association