



Canadian Securities
Administrators

Autorités canadiennes
en valeurs mobilières

CSA Staff Notice 45-310

Update on CSA Staff Consultation Note 45-401 Review of Minimum Amount and Accredited Investor Exemptions

June 7, 2012

Introduction

On November 10, 2011, CSA staff published CSA Staff Consultation Note 45-401 *Review of Minimum Amount and Accredited Investor Exemptions* (the consultation note). The consultation note provided information about the two exemptions under review and set out 31 consultation questions. The comment period closed on February 29, 2012.

This notice updates market participants on the status of this consultation.

We received 108 comment letters and feedback from over 300 people who attended consultation sessions held across Canada. People expressed a wide range of views in the written comments and in the consultation sessions. We thank all participants for contributing to our consultation.

Accredited Investor Exemption

Many commented on the importance of the accredited investor exemption for raising capital.

Some commenters supported retaining the accredited investor exemption and the definition of accredited investor in its current form. They commented that although the current income and asset thresholds are not perfect proxies for investor sophistication, they are administratively efficient and practical to apply.

Some commenters suggested ways we could broaden the exemption to increase access to capital by businesses and opportunities to invest in the exempt market for more people. Their suggestions included lowering the prescribed income and asset thresholds or adding new categories of accredited investor based on an investor's education, work experience or investing experience.

We received some comments suggesting that we increase the thresholds or impose additional limitations on the use of the exemption to ensure sufficient investor protection.

Minimum Amount Exemption

There were divergent comments about the minimum amount exemption. Many stated that the minimum amount is a flawed basis to measure investor sophistication or ability to withstand loss and operates to discourage diversification or appropriate investment strategies. Many recommended that we repeal the exemption because of these concerns.

Others recommended that we keep the exemption at its current threshold despite these concerns. Their reasons for keeping the minimum amount exemption included: its usefulness as an alternative exemption when no other is available; its simplicity where investors are not willing to complete paperwork; and, the reasonable assumption that an investor would exercise care and caution before making such a large investment.

Some recommended that we add requirements to the exemption to increase investor protection. Their suggestions included: changing the threshold; adding risk and financial disclosure requirements; prohibiting sales to individuals; requiring a suitability assessment by a registrant; and, replacing the current dollar threshold with a maximum investment limit based on a percentage of the investor's net worth or net income.

Impact on Capital Raising and Investment Opportunities

Many expressed concern that any change that would restrict the availability of the prospectus exemptions would negatively impact capital raising for issuers, particularly small and medium-sized enterprises. Some suggested that the CSA should not change the exemptions unless there is clear evidence not only of a problem but also that the change would address that problem. Others asked the CSA to provide quantitative and qualitative data on the use of current prospectus exemptions to give better understanding of staff's concerns.

Some commenters encouraged the CSA to consider expanding the accredited investor definition or adopting additional prospectus exemptions in order to support capital raising by small and medium-sized enterprises and to allow more investment opportunities.

Harmonization

Some commenters encouraged CSA members to renew their efforts to harmonize the current prospectus exemptions that exist in National Instrument 45-106 *Prospectus and Registration Exemptions*.

Next Steps

This is not a complete list of the comments received. Given the number of comments and the diversity of the feedback provided, staff will need further time to complete their review and consider the feedback. Before making any recommendation about these exemptions, we also intend to gather and analyze information from filed exempt distribution reports. The CSA will finalize this review and publicly report on our conclusions later this year.

Some CSA jurisdictions are considering expanding their review to include other capital raising exemptions, including the offering memorandum exemption, as well as research about exemptions in other jurisdictions, such as the U.S., U.K. and Australia. Some CSA jurisdictions may issue local notices announcing their plans.

Questions

Please refer your questions to any of the following people:

British Columbia

Leslie Rose
Senior Legal Counsel, Corporate Finance
British Columbia Securities Commission
604-899-6654
Toll free across Canada: 800-373-6393
lrose@bcsc.bc.ca

George Hungerford
Senior Legal Counsel, Corporate Finance
British Columbia Securities Commission
604-899-6690
Toll free across Canada: 800-373-6393
ghungerford@bcsc.bc.ca

Alberta

Tracy Clark
Legal Counsel
Alberta Securities Commission
403-355-4424
Tracy.Clark@asc.ca

Patrick Hlavac-Winsor
Legal Counsel
Alberta Securities Commission
403-355-2803
Patrick.Hlavac-Winsor@asc.ca

Saskatchewan

Sonne Udemgba
Acting Deputy Director, Legal (Securities Division)
Saskatchewan Financial Services Commission
306-787-5879
sonne.udemgba@gov.sk.ca

Manitoba

Chris Besko
Legal Counsel - Deputy Director
The Manitoba Securities Commission
204-945-2561
cbesko@gov.mb.ca

Ontario

Jo-Anne Matear
Manager, Corporate Finance
Ontario Securities Commission
416-593-2323
jmatear@osc.gov.on.ca

Elizabeth Topp
Senior Legal Counsel, Corporate Finance
Ontario Securities Commission
416-593-2377
etopp@osc.gov.on.ca

Maria Carelli
Senior Accountant, Compliance and Registrant Regulation
Ontario Securities Commission
416-593-2380
mcarelli@osc.gov.on.ca

Carolyn Slon
Legal Counsel, Corporate Finance
Ontario Securities Commission
416-593-2364
cslon@osc.gov.on.ca

Melissa Schofield
Senior Legal Counsel, Investment Funds
Ontario Securities Commission
416-595-8777
mschofield@osc.gov.on.ca

Quebec
Sylvie Lalonde
Manager, Policy and Regulations Department
Autorité des marchés financiers
514-395-0337, ext. 4461
sylvie.lalonde@lautorite.qc.ca

Nova Scotia
Shirley Lee
Director, Policy and Market Regulation
Nova Scotia Securities Commission
902-424-5441
leesp@gov.ns.ca

Newfoundland and Labrador
Don Boyles
Program & Policy Development
Securities Commission of Newfoundland and
Labrador
Government of Newfoundland & Labrador
709-729-4501
dboyles@gov.nl.ca

Northwest Territories
Donn MacDougall
Deputy Superintendent, Legal & Enforcement
Office of the Superintendent of Securities
Government of the Northwest Territories
867-920-8984
donald_macdougall@gov.nt.ca

New Brunswick
Brian Maude
Legal Counsel
New Brunswick Securities Commission
506-643-7202
brian.maude@gnb.ca

Prince Edward Island
Steve Dowling
Superintendent of Securities
Prince Edward Island
902-368-4552
sddowling@gov.pe.ca

Nunavut
Louis Arki, Director, Legal Registries
Department of Justice, Government of
Nunavut
867-975-6587
larki@gov.nu.ca

Yukon
Frederik J. Pretorius
Manager Corporate Affairs (C-6)
Dept of Community Services
Government of Yukon
867-667-5225
Fred.Pretorius@gov.yk.ca