Annex D1
Overview of Comments Received on CSA Staff Consultation Note 45-401
Review of Minimum Amount and Accredited Investor Exemptions

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. We continued to receive comment letters months after the deadline.

We received 110 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 everyone for the feedback they provided. We carefully considered the comment letters and feedback we received. Annex D2 contains a list of the commenters and Annex D3 contains a summary of the written comments.

Overview of the written comments

The AI Exemption

The comment letters contained a common theme: the importance of the AI Exemption for raising capital. Many commenters expressed concern about any changes to the AI Exemption that may limit access to capital, particularly for small and medium sized enterprises. Over half of the commenters supported keeping the exemption at its current income and asset thresholds. About a third of the commenters supported decreasing the thresholds to encourage new capital investment.

A few commenters supported increasing the thresholds, mostly to account for inflation. However, an equal number of commenters disagreed with indexing the thresholds to inflation, giving the following reasons:

- the number of Canadians who qualify as accredited investors under the current thresholds is a very small percentage of the population
- inflation is not necessarily the appropriate measure since it does not measure increases in income

A few commenters suggested eliminating the AI Exemption altogether and replacing it with alternative exemptions or adding additional protections.

Commenters were almost evenly divided on whether to require accredited investor status to be certified by an independent third party. A slight majority answered in the negative, for the following reasons:

- it would add another level of costly compliance
- whoever is performing the certification would have to rely on the investor's representations just as issuers and registrants currently do - how would a third party be better able to verify

the truthfulness of the investor

- investors could construe this as intrusive and would resent that their own representations are insufficient
- if an investor certifies that they qualify, that should be sufficient

The MA Exemption

Unlike for the AI Exemption, there were divergent views of whether we should repeal the MA Exemption. Commenters were almost evenly divided on this question. Slightly more commenters supported repealing it because:

- it is philosophically unsound - the size of the investment is not relevant to measuring investor sophistication or ability to withstand loss because the investment could represent a significant portion of the investor's financial assets
- it creates a risk that the investor may over-concentrate their investment portfolio in one investment
- it is dangerous for investors – they could lose their entire life savings or be financially destroyed
- many investors under this exemption would also be accredited investors

Those commenters who supported retaining the MA Exemption gave the following reasons:

- it is simple and easy to use
- it provides a useful alternative to the AI Exemption when needed
- regulators should continue to support access to capital by issuers during this difficult economic period
- $150,000 still represents a significant amount for most people and is indicative of having the financial resources to afford advice if they choose.

A slight majority of commenters who responded to this question were **against** indexing the $150,000 threshold to inflation. Their reasons included:

- to adjust for three decades of inflation would have too drastic an impact
- it would exacerbate the over-concentration problem
- the exemption is philosophically unsound – increasing the threshold would only exacerbate the problem
- inflation and consumer price indices are irrelevant because they are measures of purchasing power rather than income or net worth