

Susan Copland, LLB, BComm
Managing Director
scopland@iiac.ca

December 23, 2020

Cathy Tearoe
Senior Legal & Policy Counsel
Alberta Securities Commission
Suite 600, 250 – 5th St. SW
Calgary, AB T2P-0R4

New.Economy@asc.ca

Dear Ms. Tearoe:

Re: CSA Multilateral Notice 45-327 Proposed Prospectus Exemption for Self-Certified Investors (the “Proposed Exemption”)

The Investment Industry Association of Canada (the “IIAC” or the “Association”) appreciates the opportunity to comment on the Proposed Exemption. The IIAC supports regulatory efforts to facilitate capital raising in Canada, and the Proposed Exemption can, with certain adjustments assist in this objective.

Although the impetus for the Proposed Exemption arose out of the ASC’s *“Energizing Alberta’s Capital Market”* initiative, a similar proposal, supported by the IIAC, was the subject of consultation under the Ontario Capital Markets Modernization Taskforce. It is appropriate that the Proposed Exemption be applicable across all Canadian jurisdictions given the national nature of the capital markets, and the interest among major Canadian regulators to provide investment opportunities uniformly to Canadian investors.

1. To what extent do you anticipate that this prospectus exemption would be relied on by businesses in Alberta or Saskatchewan?

Although the objective of the Proposed Exemption, which is to expand the existing prospectus exemption regime to provide access to a broader investor base with sufficient knowledge and expertise to mitigate risk, is appropriate and would be of significant interest to businesses, the nature of the criteria is likely to overlap with those already eligible to invest using the accredited investor exemption. Investors with the prescribed designations and experience are likely to be

employed in positions where they would meet the income and/or asset tests required to be considered an accredited investor. As such, it is unlikely that the availability of the Proposed Exemption will have a material effect on the number or types of investors available to invest in eligible issuers in Alberta or Saskatchewan. Although it may be somewhat helpful, the Proposed Exemption is likely to be of limited value.

2. **In setting the limits on investment, we considered that a policy rationale for the accredited investor exemption is ability to withstand loss. Investors investing under the proposed exemption are likely not accredited investors and can be assumed to have annual income of less than \$200,000. Are the limits of \$10,000 in any one issuer in a 12 month period and \$30,000 in all issuers in a 12 month period appropriate in ensuring that an investor has the ability to withstand the loss of the investment? Are other conditions necessary to address investor protection concerns?**

As noted above, given the significant educational and experience requirements for qualification, we would expect that those that meet the criteria will be employed in positions that would put them in the accredited category, and therefore able to withstand investment losses. As such, the investment limits are not likely necessary. If however, the criteria is expanded beyond these highly skilled, and likely highly compensated professionals, it may be appropriate, in certain circumstances, to impose limits.

Notwithstanding the characteristics of the individual investors, the lower limit of \$10,000 should be reconsidered. For many financing transactions, particularly those of a significant size, a minimum investment amount is required, as issuers and intermediaries seek to minimize the paperwork and administration that results from having significant numbers of small investors. Given that this minimum investment requirement is generally significantly higher than \$10,000, the Proposed Exemption would be of limited value to issuers and investors. We suggest that in order realistically to allow such investors to participate, the maximum investment per issuer be increased to \$20,000, and the aggregate limit be increased to \$40,000.

We also suggest that if the investment is facilitated through an investment dealer, the maximum investment not be applicable, as the investment process would be subject to know-your-client and suitability requirements imposed under securities law. This would, in effect, expand the Investment Dealer exemption, available in Alberta, Saskatchewan, British Columbia, Manitoba and New Brunswick, to situations where the issuer is not listed on a Canadian exchange.

3. **Are there other factors that an investor should acknowledge they understand in the Self-Certified Investor Statement and Acknowledgement?**

The Investor Statement and Acknowledgement is very comprehensive.

4. **The exemption focuses on financial and investment education and experience. Are there other designations or courses that would provide an investor with relevant financial and investment education and should be included e.g., the chartered investment management designation? Please explain.**

We agree that the Proposed Exemption should be expanded to include designations and courses that would provide an investor with relevant financial and investment education, such as the CIM designation. It may be useful to consider including the courses required for qualification as an investment registrant, without requiring the individual to actually be a registrant or former registrant as required under the accredited investor exemption. Consistent with the Ontario Modernization Taskforce Consultation, we recommend increasing the criteria to also include those individuals who have completed relevant proficiency requirements, such as the Canadian Securities Course Exam; the Exempt Market Products Exam; or those who have passed the Series 7 Exam and the New Entrants Course Exam (as defined in NI 31-103).

- 5. In the ASC consultations, some parties suggested that we should include persons with experience or education that is not of a financial or investment nature but that is relevant to the industry in which they propose to invest. For example, it was suggested that we allow a young professional with a computer science degree to invest in a software technology company or an individual with a petroleum engineering designation to invest in an oil and gas company. However, others raised concerns that those type of educational criteria would not adequately address investor protection concerns as the investor may not appreciate the financial or investment considerations important to investing.**
- a. Are there other education or experience qualifications that we should consider? Please explain.**
 - b. What other conditions might help to ameliorate the risks that the investor may not appreciate the financial and investment considerations?**

We support the concept of allowing persons with relevant educational or professional qualifications to invest in the industry in which they have expertise. We recommend that the criteria be restricted to professional designations, such as engineers, geologists, and those with educational qualifications to adequately assess the technology and/or managerial capability of the issuer rather than general degrees with a specialty. In such situations, we recommend that unless the investment is made through an investment dealer with know-your-client and suitability obligations, the maximum yearly investment amounts of \$20,000 per issuer and \$40,000 aggregate apply.

- 6. The proposed exemption contemplates lawyers but only where their practice has involved being significantly engaged in providing financing or mergers and acquisitions advice. As worded, the requirement is a subjective assessment by the lawyer. Should objective criteria be provided e.g., percentage of practice and/or years of practicing? If so, what minimum level of experience is appropriate?**

Criteria, such as percentage of practice is difficult to firmly ascertain, and may vary year to year. The criteria to qualify for the Proposed Exemption should be clear and able to be objectively confirmed.

- 7. One of the goals of the proposed self-certified investor exemption would be to help facilitate the development of the angel investor entrepreneurial community. Although angel investors**

may invest directly into early-stage businesses, we understand that angel investors will often invest on a syndicated basis, forming a special purpose vehicle, such as a limited partnership or corporation, in which they will invest and then that special purpose vehicle will invest in an early-stage business. The proposed self-certified investor exemption could facilitate direct investment into a business or a special purpose vehicle. However, the distribution of securities of an early-stage business to a special purpose vehicle also requires reliance on a prospectus exemption. We understand that these financings are often conducted under the private issuer exemption, which allows the distribution of securities to a number of specified parties, including accredited investors. We understand that the special purpose vehicle is often treated as an accredited investor because all the owners of interests (except voting securities required to be owned by directors) are accredited investors. This option would seem not to be available for a special purpose vehicle where one or more of the owners of interests were self-certified investors.

- a. **Would this issue be adequately addressed by providing guidance that the ASC and FCAA would not object to an issuer relying on s.2.4(2)(l) of National Instrument 45-106 Prospectus Exemptions, i.e., the prong of the private issuer exemption that permits a distribution to a person or company that is “not the public”, provided that the special purpose vehicle is predominantly owned by accredited investors e.g., at least 80% of the funds contributed to the special purpose vehicle were contributed by accredited investors?**

This accommodation, allowing 20% of would provide investors with more flexibility in how they invest, and may allow issuers to have increased access to special purpose vehicles by allowing a certain portion of self-certified investors to participate. We do not believe this creates any investor protection issues.

- b. **Are there other alternatives that would better address this issue?**
- c. **If we were to adopt the proposal outlined in 7a., a Form 45-106F1 Report of Exempt Distribution would be required for the sale of securities to the self-certified investor. Would this be a significant deterrent to distributing securities to self-certified investors given that private issuers do not otherwise have reporting obligations to securities regulators? Given our interest in tracking use of this exemption, could we address this issue by requiring only a very simple letter reporting on use, which could be filed by email?**

We do not have direct information on this issue and private investors’ concerns with reporting to regulators.

Thank you for considering our comments. If you have any questions, please don’t hesitate to contact me.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'S. Copland', written in a cursive style.

Susan Copland