Annex D3
Summary of Comments on CSA Staff Consultation Note 45-401 Review of Minimum Amount and Accredited Investor Exemptions.

CSA Review of Accredited Investor and Minimum Amount Prospectus Exemptions
Summary of Comments

Defined terms:

CSA Staff Consultation Note 45-401 *Review of Minimum Amount and Accredited Investor Exemptions* (the Consultation Note)
National Instrument 45-106 *Prospectus and Registration Exemptions* (NI 45-106)
National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (NI 31-103)
Accredited investor prospectus exemption (AI exemption)
Minimum amount prospectus exemption (MA exemption)
Offering memorandum exemption (OM exemption)

No.	Topic	Comment
General		
1	**Underlying principles and objectives**	Investors should have a broad choice and access to a wide range of products and professional managers. Key objectives of this review should be to increase the availability of investment choices to as many Canadians as possible and to broaden the pool of investors able to invest in the exempt market. The CSA should consider additional policy objectives related to these exemptions such as stimulating economic growth and capital raising. The CSA should focus on requirements that increase transparency, awareness of risk, and the availability of information in the exempt market. The exempt market will be ill served by requirements that are likely to limit participation by investors who clearly have the financial resources to withstand loss or obtain expert advice in relation to an exempt investment. In order to establish a set of rules that allows issuers to raise capital and to protect investors in the absence of a prospectus, list the objectives that the AI exemption is intended to achieve. The rules for these exemptions should not be so cumbersome as to exclude relatively minor investments in private ventures. Investors, in the absence of a prospectus, should be able easily to collect information on a prospective investment. Investments, whether sold by prospectus or not, must be deemed to be suitable for investors based on the information collected in the “know your product”, “know your client” and “investment policy statement” (IPS) process. The rules should not exclude investors who are informed nor should they include investors who are not informed. The rules should not be assumed to protect investors from their own stupidity or irresponsibility. There are no rules that prohibit someone from investing 100% of their investable assets into a publicly-traded penny stock through a discount broker (i.e. where there is no advisor involved and therefore no suitability analysis undertaken). Similarly, the rules in the exempt market should not

No.	Topic	Comment
		be designed to make it impossible for a fully informed investor to invest everything in one issuer or product if the investor believes that is appropriate. In that case, any dealer involved in the sale would have the responsibility to advise against such a trade, but if the investor is determined to make the investment notwithstanding that he or she should have that choice. Regulatory regimes should ensure investors and advisors can understand the products in which they invest. The regulators need to strike a balance between investor protection and capital raising for small business, however the current system of prospectus exemptions cannot succeed in striking this balance. The regulators need to balance competing interests to make sure funding is available at a reasonable cost to small and medium enterprises which may not be able to afford to offer securities by way of a prospectus offering. The concept that a prospectus in any significant manner protects investors is flawed as most investors do not read the prospectus. While many investors in the exempt market are institutions (such as banks and pension, insurance, or mutual funds), exempt distributions are increasingly being marketed and made available to retail investors. These investors are far more vulnerable than their institutional counterparts because they have no “cushion” and are unable to bear losses to the same degree as institutions. Proportionality between maintaining market efficiency while protecting the interests of retail and institutional investors is critically important. Currently, only 1% of Canadians meet the annual income threshold of $200,000 (based on Statistics Canada data). Similarly, approximately 1% of Canadians have financial assets that meet the AI $1 million threshold. The pool of available investors in the exempt market is already very small. Consider the type of individuals who invest in the exempt market. They tend to eschew the public markets in favour of smaller, more entrepreneurial ventures (whether speculative or not). It is exactly these types of investors who are most likely to be entrepreneurs themselves; owners of small businesses and income-producing real estate. Additionally, these individuals tend to “live off their company”, meaning that their reported personal income is often a bad proxy for their lifestyle or spending power. These are the very people -- successful, educated, sophisticated entrepreneurs -- who are most inappropriately excluded from AI status and therefore unable to make sound investments in exempt market products, even those issued pursuant to an offering memorandum (at least in Ontario, where there is no offering memorandum (OM) exemption). These investors want access to investments they understand. The prospectuses, disclosure documents and financial statements of many public companies often are impenetrable to these individuals. There is no opportunity to meet with senior management in order to assess the soundness of a business model or to survey other qualitative aspects of the business. Rather, these individuals would prefer to have the opportunity to conduct in-person and in-depth due diligence on investment opportunities and managers, and are exactly the sort of people whom we should encourage to invest in small and medium-sized enterprises.
	What is the appropriate basis for the MA and AI exemptions?	Exemptions should consider the type of issuer issuing the securities, the type of seller involved and the complexity of the security. Consider the test applied in the European Union as part of the *Markets in Financial Instruments Directive*. This defines a class of “professional” investors – being investors who possesses the experience, knowledge and expertise to make investment decisions and properly assess associated the risks. Persons without exposure to finance (high net worth individuals should not be presumed to have financial training) will often have difficulty understanding certain

No.	Topic	Comment
		investments. The exemption does not recognize where investors are in their life cycle, which is admittedly difficult to discern because of the changing demographics in Canada. Financial asset and income tests are both under-inclusive and over-inclusive. Sophisticated investors may be excluded but unsophisticated investors may be included. Although monetary thresholds are not perfect proxies for sophistication, appropriate thresholds likely do bear some relationship to investors' sophistication and ability to withstand loss and provide a measure of investor protection. However, the notion that having a certain level of financial resources is indicative of an ability to withstand loss is simplistic. For individuals, the size of an investment in relation to total net worth is the most relevant criteria for determining whether a loss will cause hardship. It may be recommended that no more than 5 to 10% of net worth be invested in private or alternative products. Education and work experience are important criteria for determining whether an investment is appropriate. Financial professionals, corporate lawyers and professional accountants all have financial education and experience relevant to evaluating risk. This is because financial and legal education contribute to the ability to do one's own due diligence and helps clarify when external expertise is required. However, other education and work experience can be equally relevant in evaluating a start-up business depending on its focus, for example: patent agents, doctors and dentists or computer sciences training could be relevant. The current rationales for the AI exemption cited in the Consultation Note remain appropriate, namely: sophistication, ability to withstand financial loss, resources to obtain expert advice and incentive to evaluate an investment given its size. Key investor attributes relevant to determining whether an investor should be able to invest in the exempt market include: investment experience, financial resources, access to information/advice, relevant work experience and education (in that order). The ability to make an informed investment decision is based on experience more than resources. No single factor (such as income or net worth) can determine whether or not an investor is sufficiently sophisticated. Requiring the involvement of a professional analyst to provide a sophisticated opinion will resolve this issue. Almost all analysts hold the CFA designation which means they are sophisticated. The right question to ask is "what is reasonable disclosure by sales people and issuers in addition to disclosure requirements today?" The main purpose of a prospectus is to provide an opportunity for any investor to fully inform him or herself of the risks being assumed with an investment in any security. Investors may or may not choose to read the prospectus. But the fact that such detailed information is *available* is clearly at the heart of the prospectus requirement. The prospectus requirement does not require that an investment is suitable for a given investor. The fact that any investor can open an account with a discount broker and trade without receiving advice on suitability demonstrates this point. The notion that an investor's financial resources, educational background, work experience, or investment experience should form the basis of an assumption of eligibility to make any investment under any circumstance is flawed. Rather, these factors should form an integral part of the determination of *suitability* in the eyes of a

No.	Topic	Comment
		truly arms-length, third-party registrant at the time of investment. The ability to withstand financial loss: This is a valid premise and a good contrast to the concept of sophistication. For example, a person who lacks the "sophistication" or the knowledge and experience to assess the risk of an investment may not care, as they have the financial means to suffer the loss of their investment. We think this premise opens up another valid and important scenario that doesn't exist under the current prospectus exemptions. A person of moderate financial resources, e.g. a person that does not meet the current financial tests of an Accredited Investor, may be willing to suffer the loss on a smaller investment that represents say only 10% of their total liquid net worth for the potential of a significant capital gain. The current regulations for the exempt market restrict many Canadians from participating even in smaller amounts and we do not believe this is ultimately in the public interest but privileges the wealthy. In this scenario, the level of sophistication becomes less relevant. The question is what constitutes the ability to withstand risk and what is the appropriate proxy? It is our opinion that the MA exemption and the AI exemption should be based on an individual's financial resources and/or investment knowledge (i.e. registered as a financial advisor, fund manager, etc.). After reading the definition of an accredited investor in NI 45-106 I have made the assumption that there is really no issue with the majority of the parties on the list since most would be or have investment professionals that are registered and regulated within the securities industry as staff. I am focusing my comments on the AI's that would be individuals outside the investment industry and possibly corporate entities that are sole proprietorships or are holding companies for families or trust with few beneficial holders. The difficulty in assessing each of the criteria, is that depending on the degree the criteria applies to an individual or is present/lacking, should probably not disqualify the person from making the investment in some circumstances. The issue is that although each criteria may have a quantitative or measurable value (the objective aspect), there may be (or should be) some subjectivity in weighting each of them to arrive at a decision on whether an individual qualifies to use the AI exemption. If the participants were to rank the list given or to add or subtract from the list what would that list look like? Financial resources (ability to withstand financial loss or obtain expert advice these are probably mutually exclusive and the ability to obtain expert advice should be a separate item on the list); access to financial and other key information about the issuer (and the ability to interpret the information); educational background (and in what areas); work experience (and its relevance to business of the issuer), investment experience, or age (would it not be a factor in considering some of the above if the person was retired vs. just starting out in the work force)(or is this falling into the realm of discrimination?) Primarily an arbitrary number of any amount is a poor gauge of suitability. It should be the individual's responsibility and choice to invest the appropriate amount for them based on their financial situation. As it pertains to the objective of protecting the unsophisticated investor, there are limited options, which we believe are already substantively in place. In the case of smaller retail investors, there are mechanisms in place (for example the OM exemption available in every province except Ontario) to provide added disclosure and regulation as to the distribution of prospectus exempt securities. We feel that a system based on suitability which is reviewed by a registrant and a compliance officer to be more effective then a system of firm rules based a clients financial situation. We feel the current definition of accredited investor could be expanded to include educational background, work experience or investment experience. The current definition of an accredited investor is primarily focussed on financial resources and we feel it unnecessarily restricts many other market participants who are

No.	Topic	Comment
		sophisticated enough to protect themselves. We believe that the premise of the $150K MA exemption is unsound and therefore it should be removed. As for the AI exemption, we believe similarly that requiring assets with open classism is unfair and frankly misrepresents the purpose of investing. If this market is only to be left to a certain class of people whose money again does not indicate sufficient sophistication it is unrealistic. We do not accept the premise that an investor's financial resources, educational background, work experience, or investment experience should form the basis of an assumption of eligibility, or demonstrate sufficient sophistication or level of understanding, to make any investment under any circumstance. We recommend a regime in which these factors form an integral part of the determination of *suitability* by an arms-length, third party registrant at the time of investment. We do feel that the majority of the outlined factors should be a part of the overall AI exemption within reason. For instance the financial threshold alone should not be the sole reason behind an exemption for that particular client. Access to key financial information in regards to the issuer should certainly be a necessary component of the exemption, (such as audited financial statements, which aid tremendously in disclosing the true operations of an issuer as opposed to solely relying on marketing materials). Educational background and work experience should bear some weight, however we feel it is unfair to say that a person(s) with an educational background, as opposed to a person(s) that may have learnt investment skills from real life investment experience would be better qualified to make an educated investment decision. We feel that a mix of these factors in addition to a regulatory framework that would require the issuer to disclose financial information and documents (as evident in the current regulated Offering Memorandum based Exempt Market environment) supporting the business model would address adequate concerns surrounding the AI and MA exemptions. Our organization feels that a minimum amount for an exemption is not a good measure of determining an ability of an investor to take a financial loss. Through the training our industry receives as Exempt Market Dealers tells us that a number of factors need to be considered to determine an individual's suitability for an investment. Age, savings, retirement, pensions, risk tolerance, education and knowledge of the business or a product. At the very least the minimum should not be increased. It is the obligation of the EMD to evaluate the client and determine if a client is suitable to invest in that certain investment. A simple dollar mark does not make someone accredited nor should it disqualify a person from investing. MA and AI thresholds are really a proxy for sophistication, which is otherwise difficult to define (Although easy to know when you see it). We have found that the KYC rules and AI certification by the investor are effective for weeding out those who should not invest. In general, the MA rule only comes into play in one situation, which is where an entity (such as a Family Trust or corporation) does not itself qualify as an AI, despite being governed by a sophisticated investor or being part of a family which otherwise qualifies. In such situations, the MA exemption may be useful. Personally, I would prefer to abolish the MA exemption and broaden the AI definition to include entities where the investment decision is made by an AI or other qualified person. We strongly support maintaining the current monetary thresholds for the AI exemption and support maintaining the $150,000 monetary threshold associated with the MA exemption. We submit that the current thresholds strike an appropriate balance between investor protection and fostering efficient capital markets. The importance of the AI exemption in particular should not be underestimated. In the provinces that permit it, the OM exemption has made the exempt market, and accordingly comprehendible investment opportunities, available to millions of Canadian investors who would otherwise be unable to participate. Perhaps even more importantly, the OM exemption has resulted in billions of dollars being placed into

No.	Topic	Comment
		entrepreneurial ideas, start ups, and small businesses which are at the heart of the Canadian economy. We feel that in certain cases (i.e. those with professional designations including CA, CMA, CFA, LLB, etc.) educational background is an appropriate basis for an exemption. As well, provided the individual in question works in an appropriate position in the financial sector, work experience may also be sufficient grounds for an exemption. We feel that investment experience may well be sufficient grounds for an exemption; however, we would need to further understand what would be deemed “sufficient” experience in order to answer in greater detail. We do not believe that there is an appropriate basis for the MA or AI exemptions in their present form. They do not assess suitability in a useful or appropriate manner. The premise of judging investor sophistication by their assets or income level is unfounded and there is no proof of any correlation. The MA exemption is self-defeating in an attempt to protect an investor because it forces such a large exposure to a single investment. …Suitability should be determined as a function of all of the individual’s appropriate variables – current financial situation, investment experience, risk tolerance, time horizon, goals, etc. The financial tests currently set out for the AI exemption already restrict availability to a very small percentage of Canadian public. According to the Canada Revenue Agency’s recent release of interim income statistics for the 2009 tax year, there were only 507,000 individuals with incomes in excess of $150,000, constituting only 2.1% of tax filers. Of these, only 173,000 individuals or 0.7% of tax filers had incomes in excess of $250,000. Hence, the $200,000 minimum income over a two year period with a similar expectation for the current year likely restricts accreditation to approximately 1.0% to 1.5% of tax filers. The minimum financial asset test of $1,000,000 also applies to very small number of Canadians. The 2011 Capgemini Merrill Lynch World Wealth Report estimated that there were 282,300 Canadian households with $1,000,000 or more of financial assets in 2010. This comprises approximately 2.3% of the 12.4 million households in Canada (as per the 2006 census). In our experience, the individuals that qualify under the Al financial tests are overwhelmingly sophisticated professionals, corporate executives and business owners who are capable of making thoughtful investment decisions. Most are experienced investors and many also have access to a network of professional advisors to assist them in their decision-making. Only a very small proportion would we consider inexperienced and, in these instances, the investor is typically sophisticated enough to be aware of his or her limitations and either restricts their investing to GIC’s and the like or delegates his or her investment decision-making to a discretionary portfolio manager. The financial tests currently in place for the AI exemption limit exempt product access to a very small proportion of investors and in our opinion, act as good proxy for the level of sophistication and are highly correlated with other tests such as education, investment experience and the ability to take a loss. The MA exemption, although not as an effective indicator of “sophistication” as the financial tests of the AI exemption, does act in our opinion as a substantial barrier to investment by “non-sophisticated” retail investors. The dollar amount involved with a $150,000 threshold is material and thereby effectively excludes investment by most Canadians. According to Statistics Canada, the median net worth of Canadian households in 2005 was only $166,000 – approximately the same level as the exemption. In our experience, the MA exemption does allow access to exempt products by “sophisticated investors” who do not qualify as accredited investors. Frequently, they are younger and are in the process of building both their careers and portfolios. In fact, eliminating only the MA exemption, in some respects, discriminates against younger, “sophisticated” investors. We note that personal wealth is no measure of sophistication when it comes to the securities markets, as many well-to-do Canadians have built up their assets through means other than participation in securities. As such, the financial thresholds prescribed in NI 45-106 serve more so as a measure of whether an investor has the depth of financial position to weather a loss should their investment in an exempt product not work out as planned. The financial thresholds in place at present are sufficiently restrictive from this point of view. To increase the benchmark amounts would be to restrict access to exempt market products to an unreasonable degree. Furthermore, increasing the financial thresholds (an adjustment for inflation, for example) will offer no new protection to investors, but it will serve to hamper the ability of the capital markets to operate efficiently at the smaller capitalization level. Adults should be held responsible for their own investment decisions. The list of possible characteristics as a basis for these exemptions will be difficult to apply on a

No.	Topic	Comment
		practical basis. Any criterion will be arbitrary and will likely exclude potential investors who should not be excluded. We do not agree that educational background is a good measure, although investment experience is, and work experience, if generated in an investment firm, may very well be (perhaps the test should be whether the investor is a registrant). Without practical experience, however, the completion of a program of education does not, by itself, uniformly provide an investor with the appropriate level of sophistication or ability to withstand financial loss. Unlike the MA exemption, the AI exemption incorporates asset and income thresholds and is a more nuanced mechanism with which to grant investors access to securities distributions in the absence of a prospectus. However, these standards are merely financial and may not ensure that investors are appropriately sophisticated to understand the risks of exempt investments. The fundamental question is not one of minimum thresholds. The question is how do we protect or ensure that the proper level of due diligence is done with respect to investments of a substantial amount provided to an entrepreneur or third party business. The current income and asset tests act as excellent indicators of “sophistication”. Limiting the market based on work experience in the investment industry is tantamount to eliminating the exemption. Limiting the exemption based on industry qualification or advanced degrees in business is either unduly restrictive and/or no guarantee of “sophistication”.
	Does the involvement of a registrant address any concerns?	We do not think so. Securitized products that posed problems were usually sold by registrants. Registrants often have no special technical insight or industry exposure. There is an inherent conflict of interest in how registrants sell products. The involvement of a registrant in prospectus exempt products can reduce risks to the investor. Firms have a “gatekeeper” role which combines “know your client” and “know your products” expertise. The professional attributes of an advisor is the best protection for retail investors whether they are accredited or not. We do not think registrants need to be involved in AI trades. AIs are able to make a decision about whether to seek advice or not. Requiring a registrant to be involved adds complexity and delay to the process, raises issues around compensation for the registrant and potentially creates conflicts of interest if funds for the investment are being removed from the registrant’s management (for which registrant earns fees). Involvement of a registrant is a strong positive as they are subject to know your client requirements but should not be mandatory. The involvement of a registrant addresses some concerns, however, having a registrant plus a third party analyst report is more ideal. This is because a registrant serves client and isn’t necessarily adept at investment analysis. Where a registrant is involved in an exempt market offering, the focus for regulators should be on the proper enforcement of those existing duties and requirements which include suitability obligations. Yes. Requiring that a registrant be involved in the transaction and that the registrant assess “know your client” (KYC), “know your product” and “suitability” with each investor in each prospective investment can, when honestly applied, address concerns. The registrant would be responsible to identify situations in which an investor is “qualified” but for whom a particular investment is not suitable. We must point out, however, that a potentially unintended consequence of NI 31-103 is the registration

No.	Topic	Comment
		of "sole purpose" EMDs by issuers. These EMDs may have names that are different than the issuers whose product they exclusively represent, but these are in no way arms-length arbiters. Even with the assumption of good-faith dealing by these EMDs, the unavoidable conflict of interest, in our opinion, undermines the role of the EMD (i.e., as someone "looking out for the best interests of the client") and the objectives that NI 31-103 is designed to address. We support re-examining the MA and AI prospectus exemptions; however, we also believe that any changes made to these particular exemptions will only address some of the issues with the current exempt market regime in Canada. In our view, a greater underlying concern relates to opportunities for regulatory arbitrage that currently exist throughout the exempt market regime. Registration requirements for transacting in the exempt market are not harmonized across Canada. In jurisdictions that currently require registration to deal in the exempt market, the current scope of activity permitted under the EMD registration category in NI 31-103 creates, to the detriment of the investing public, an un-level regulatory playing field between SRO Members and non-SRO Members that engage in the same activity. In our view, all transactions in exempt market securities should require the involvement of a registrant under securities legislation. We note that this would require reconsideration of the alternative approach to EMD regulation that has currently been adopted in certain jurisdictions. In addition, having regard to the concerns noted, we believe that EMDs should not have the ability to transact in prospectus-qualified securities. The involvement of a registrant who is obligated to recommend only suitable investments does interpose an individual with an over-arching and regulatory responsibility to make only suitable recommendations, although we recognize that an investor is not obligated to adhere to the registrant's recommendations. Having a registrant lead the distribution of the securities, while desirable, could add significantly to issuer costs. Requiring that a registrant fulfill the more limited role of judging the suitability of the investment for investors, however, would significantly strengthen the process at a modest additional cost to issuers. I submit that the largest risk of fraud is from individuals and firms who are unregistered. Why would a fraudster go to all the trouble and expense of getting registered? So if the OSC were to adopt a rule that an issuer must have a suitability test done by a registrant, this would provide much stronger protection to investors who are being "served" by non-registered individuals. This has the potential to significantly restrict small and mid-size companies from accessing this market. If a requirement was imposed on registrant firms that they must be involved in the distribution of all securities on the exempt market utilizing the MA or the AI exemption, they would very likely require significant compensation from the issuer in order to take on this task. The level of compensation may be too high for some issuers and would for all practical purposes cut-off this source of capital-raising for small to medium size issuers. We are also concerned that placing this requirement on registered firms which, due to their business focus may not be willing to raise capital in smaller amounts or for smaller issuers, would again effectively cut off this source of capital-raising by small to medium size businesses. The registrant and the dealership is best positioned to determine the appropriate steps required to fulfill its KYC obligation given the circumstances of the contemplated trade and the particular client. Yes, quite definitely. We believe that "Know Your Client" and resulting investor suitability determination made normally by qualified registrant advisors should be fundamental to any exempt market investment decision. Experience has shown that this can be a complex determination that is unique to each client. With the implementation of NI 31-103 and related instruments, at considerable effort and cost, exempt market dealers and issuers accept the responsibility and risk of ensuring client suitability including risk tolerance for any investment that may be recommended. Particularly in the last two years, the quality of KYP and KYC processes undertaken by most exempt market dealers has substantially improved and we believe now does the best job possible to protect investors. As such, the somewhat arbitrary restrictions imposed on investors by both the minimum amount and AI exemptions may not further serve investors. Our experience has shown that these

No.	Topic	Comment
		restrictions are being viewed by some potential investors as arbitrary, draconian and "big brotherish". It is felt by some that these restrictions generally serve to disenfranchise rational, intelligent investors from benefiting from investments that would serve to increase diversification, potentially their ROI and, in some cases, avoid issues of market volatility. Yes, having a dealing representative, represent only approved and researched exempt market products lowers the chances of an investor placing capital into "lower grade" investment products within the overall marketplace. Further to that having the representative only recommend suitable products for that specific client, may address concerns surrounding the education level of the investor making their own decisions without the aid of a knowledgeable representative. A firm or an individual that is distributing their own product would be registered as an EMD and has an obligation to ensure that suitability is performed. The knowledge of the product or the investment will allow an EMD to appropriately determine what is appropriate. At the end of the day it is the education and the experience and knowledge of the EMD that should be the focus of our industry to ensure that the right measures are used to perform suitability. An EMD who is distributing product that they are intimately involved in the distribution enhances the knowledge that can be passed to a potential investor because they understand the product they are selling, where a third party EMD may not be able to provide the level of sophistication to communicate the product risks. The involvement of a registrant who properly discharges its know-your-client and know-your-product duties and the suitability obligations prescribed in NI 31-103 and IIROC regulations will provide additional protection to purchasers in the exempt market. If there is a concern that dealers and individual representatives are not appropriately discharging these duties, then this is an appropriate matter for regulatory enforcement. While we are of the view that the current exemptions are sufficient to protect investors, we note that registrant involvement may provide additional protection. We do not, however, think it is appropriate to condition a prospectus exemption on registrant involvement. We believe that the presence of an explicit fiduciary or similar obligation on advisors to act in the best interest of their clients would mitigate at least some concerns about the potential for abuse of these exemptions. It would also reduce the need for regulators to become involved in private placements to ensure that investors make informed investment decisions. If this duty were in place, the existing thresholds, with minor modifications, might be appropriate. In the absence of such a duty, however, we recommend that there by tougher restrictions on investor eligibility requirements. The Exempt Market is not an unregulated market. Exempt Market funds in Canada are managed by regulated Portfolio Managers (Advising Representatives) who have both a know your client (KYC) obligation and a duty to ensure that the investment is suitable for each client. I am convinced that the only way to truly protect the investing public is to keep bad operators out of the industry via the registration system. It is the integrity of the investment manager and the advisor/ dealer that is paramount. The registrant plays a vital role as gatekeeper to the capital market and ought to be forefront in the distribution of these investments. This individual retail investor may be particularly vulnerable where they are not advised by a qualified, independent advisor that has an obligation to consider the suitability of the investment in respect of their specific circumstances. We would maintain the MA exemption at its current dollar amount but couple its use with the requirement that either a registrant who has an obligation to recommend only suitable investments to the purchaser or a portfolio manager be involved when it is used in respect of a distribution to individual investors.

No.	Topic	Comment
		The involvement of a registered individual combined with the due diligence requirements of the EMD's help to provide a scenario where an investor may actually truly diversify their investment portfolio by allowing them access to well researched private companies that match their investment objectives. I will add however, that the bar on the education requirements needed to become an EMR could certainly be raised. Though, we would prefer to see individuals seek advice on exempt products from registered PMs. It is wonderful that over the years the regulators have required an increasing amount of disclosure. We do feel strongly that the vast majority of individuals do not have the time or the wherewithal to understand a lot of disclosures and their context. And, by putting the responsibility on to the registered advisor, the regulator would then be able to hold someone responsible and accountable. Based on our experience the involvement of a registrant would not assist the purchaser. The requirement to involve a registrant would be regarded as counter-productive. We do not believe that the requirement to introduce a stranger as advisor would add any benefit for these kinds of investors – the process of "knowing your client" and the level of "know your product" knowledge is unlikely to be regarded as assisting the investor in making his investment decision. Many registrants, like most traditional financial advisors, are not advisors. They are sales people who work for a commission. By its nature they are biased to sell as much as possible for the highest total commission. They gravitate to high commissions as the initial focus. This gravely skews the investment landscape immediately negative for the investor in that low commission products do not get sold, or with low priority only. An exempt markets course: Upon review of recent OSC rulings and orders, we have concluded that the exempt market actor best able to evaluate the suitability of an exempt market product for individual investors is in many cases an exempt market registrant, including a financial advisor who has taken a recognized exempt markets course. While exempt market dealers and chief compliance officers are required to complete the Canadian Securities Course Exam and the Exempt Market Products Exam, we submit — given the growing complexity of exempt market products — that *all* exempt market registrants be required to complete an exempt markets course, to ensure a basic standard of proficiency is met by key parties to an exempt market transaction. This requirement would enhance the value of advice available to prospective individual exempt market investors. In terms of proficiency requirements, an exempt market dealer's dealing representative must pass the Canadian Securities Course Exam, the Exempt Market Products Exam, or satisfy the proficiency requirements of an advising representative of a portfolio manager. An exempt market dealer's chief compliance officer must pass the PDO Exam (the Officers', Partners' and Directors' Exam or the Partners, Directors and Senior Officers Course Exam) and either the Canadian Securities Course or the Exempt Market Products Exam, or satisfy the proficiency requirements of a chief compliance officer of a portfolio manager. I would also respectfully suggest that although at times an IIROC dealer may be involved by way of providing the funds or receiving the shares, to try to thrust the burden of advising the client when the member is not involved as a party to the transaction or privy to the transaction in advance does not serve the investing public. IIROC members can only truly protect the investor if they have a say in the form of the subscription agreement, a say in the proposed settlement process and the chance to demand information around the distribution in advance. NI 31-103 should be amended: There should be more disclosure about past sales history for SALES PEOPLE or EMD owners who now control access to capital for issuers. It appears that a sales person who has sold non-performing investments for many years can continue to do so. A major related problem is the number of individuals who are acting as EMD's but are not registered to do so. At the consultation session, OSC staff confirmed that the

No.	Topic	Comment
		largest proportion of fraud or situations where investors have invested in securities inappropriate for them, involves issues where no registrant was involved. I believe that this problem has grown under the new rules, due to the massive increase in costs brought on by these rules (500% for [the commenter]) and the hundreds of hours of course time required, all of which provides a disincentive for people and firms to register. The problem is likely larger in those provinces that didn't require registration previously, but nonetheless is a significant problem in Ontario as well. Unfortunately, any tightening of the AI rules, introduction of requirements for some minimum disclosure, etc. will further decrease the likelihood that these people will register. We understand that a number of registrants do not adhere to current suitability requirements – we recommend better oversight of registrants' compliance with suitability, know your client and know your product requirements and stronger sanctions for non-compliance. Current suitability requirements are inadequate in cases of conflicts of interest. A fiduciary duty might be more appropriate. Requiring a industry standardized test for investment knowledge and experience; the test results would be reviewed by Compliance and minimum professional qualifications for those selling securities that are covered by the exemption. We would submit that the costs and benefits of having a registrant involved in every investment utilizing the Exemptions should be considered. We are not aware of the exact statistics on the use of the Exemptions in non-brokered situations but would anticipate that it would not be insignificant and thus the involvement of a registrant in all distributions would increase the transaction costs to the issuers. Further, if the Exemptions are premised on the basis of the investor being able to "fend" for himself or herself given his or her level of apparent sophistication, then the involvement of a registrant should arguably not be required.
	Does having a registered portfolio manager make a difference?	Distinguish between products in which the investor has the benefit of professional management (i.e. pooled funds) and those products which do not include professional management (e.g. equity in a single company); the former offer greater investor protection. The diversification provided by an investment fund should allow for reduced regulatory concern and therefore a lower threshold for investors under the exemptions. Entrusting others to manage your money is riskier than doing it yourself if the manager does not have the same risk of loss and if there are conflicts of interest (i.e. in how fees are paid to manager). An investor who has the benefit of a registered professional portfolio manager, making the investment decision on behalf of the investor, ought to have available to him or her an exemption that would allow the investor full access to financial products deemed by the portfolio manager to be suitable for the investor. The managed account category of the AI exemption recognizes this. An investment fund can offer the client diversification, greater access to certain financial products and brokerage cost and other savings from economies of scale that a direct investment will not. The Ontario carve-out for investment funds acquired by a fully managed account is an arbitrary distinction that fetters a portfolio manager's ability to discharge its statutory duty to act in the best interests of non-accredited managed account clients where those interests are best served by investment in a pooled product (without having to invest a minimum of $150,000 – or more - in that product). The exclusion of investment fund securities from the managed account category in Ontario is particularly perplexing when one considers that there are multiple levels of regulatory oversight in place to protect an investor purchasing a security of an investment fund. There is an initial level of investor protection in the form of the portfolio manager's KYC and suitability assessment. Once the investor's assets are invested in an investment fund, there are additional levels of protection in that both the investment fund manager and the fund's portfolio manager are subject to regulatory oversight aimed at ensuring that clients (the fund and its investors) are treated honestly and fairly. Being able to manage investors' money through a pooled fund offers substantial administrative and trading advantages compared with offering the same investments

No.	Topic	Comment
		through individual accounts, with no investor protection disadvantage. In addition, pooled funds managed by licensed portfolio managers that invest solely in publicly traded securities should be viewed differently than other pooled funds that do not share these characteristics. As a result, accredited investor rules should be eliminated on this class of funds, rather than being raised.
	Does the type of security matter? e.g. a novel or complex security	Difficult to set criteria for complexity as products are continually evolving; products that were once viewed as complex are now mainstream. It would not be reasonable to define complex products. Risk is higher to investors when the security is complex. The CSA should issue a separate consultation on the appropriate regulatory model for the sale of complex products, including whether the AI and MA exemptions are appropriate for such products. New regulatory approaches for complex products are needed. Our view is that lack of sophistication is more of a problem in the sale of investment funds, complex products, high-yield loans and possibly franchises. We are of the opinion that the income thresholds should be increased regardless of the complexity of the investment or risk disclosure provided to the investor. As previously mentioned, it is our opinion that a prospectus exempt financing conducted through an IIROC Member Firm should qualify as a stand-alone prospectus exemption. Disclosure standard should be higher and more rigorous for sellers of novel or complex products. It is not only the investment product/security but also the nature of the trading strategy that could impact a retail investor. For example, we note that the OSC/CSA has found it necessary to issue Investor ALERTS regarding inappropriate investment leveraging. Securities regulation should have general application and should not be security specific. We do not believe that the CSA should impose any investment limitations based on the novelty or complexity of a security on individual investors. By way of illustration, in April 2011, the CSA published for comment Proposed National Instrument 41-103 *Supplementary Prospectus Disclosure Requirements for Securitized Products* that, among other things, introduced a new Securitized Product Exemption which would limit the distribution of securitized products to a new class of investors, specifically an "eligible securitized product investor". We do not believe that the CSA should exclude investors from participating in the exempt market based on whether they would be an 'eligible investor' for a certain product. Furthermore, introducing a product-centred exemption may deter investment and overstate the level risk and complexity with certain types of products currently available in Canada, such as securitized products. The only way we see this as be a viable qualification is if NI 45-106 were revised to include an exhaustive list of the type of security that was considered novel or complex. A subjective "complexity test" would create nothing but uncertainty among issuers, advisors and subscribers.
	Is the type of issuer relevant? For example a reporting issuer vs. non reporting issuer?	Reporting issuers should be held to a higher standard – disclosure standard for reporting issuers should be higher and enforcement more rigorous (because AIs and the public think the reporting process confers some protection). More problems occur with non reporting issuers so further checks and balances may be appropriate. We believe you have to separate exempt market offerings into two categories and deal with them separately: brokered offerings and non-brokered offerings. For

No.	Topic	Comment
		brokered offerings, the AI exemption should be expanded with an additional qualification where the investor does not have more than X% of their liquid net worth invested in the exempt market. This category should be used if it is coupled with a suitability determination. For non-brokered offerings, we suggest the current AI exemption is valid. If there is a decision made by the commissions to make access to exempt market products more difficult than is the case under prevailing regulations, we believe it prudent that consideration be given to applying a different set of standards to equity issues conducted by companies listed on Canadian stock exchanges. Applying a simple set of standards based on a "percentage of household net worth" calculation or a "percentage of household annual taxable income" calculation (with annual taxable income having to exceed $100,000, for instance) would provide a reasonable degree of financial protection to investors participating in an equity issue.
	Should any disclosure be provided to investors?	All minimum amount investors would benefit from a required statement by the issuer that the investment is considered an alternative investment because it is long-term, illiquid and high risk and that most people should invest no more than 5 to 10% of net worth. Risk factor disclosure would be useful. I do not think the investor needs risk disclosure (in the context of the AI exemption). Require the provision of an independent analyst report in conjunction with the current AI and MA exemptions. More disclosure by issuers and about sales people should be required, not higher minimums or higher incomes. It is our opinion that whenever the AI exemption is utilized, the investor would be required to complete a minimum standard disclosure subscription agreement (i.e. acknowledgement that the investor has waived their right for recourse if they knowingly provided inaccurate information in the subscription agreement, investment threshold acknowledgement, exemption criteria, etc.). IFIC Members support improved disclosure with respect to investment funds and competing securities products, and believe that investors should receive clear disclosure that provides them with appropriate and relevant information. Such information empowers investors to make informed choices about the various securities that may be recommended to them for purchase. As a general rule we have found prospectus disclosure alone, especially of complex products such as mutual funds, SPAC's ("blank cheque" investment's), hedge funds, leveraged /reverse ETF's and non-bank ABCP to have minimal protective value for retail investors. While we understand the topic of this consultation are the MA and AI exemptions, securities related discussions are ultimately about disclosure and suitability. Given that, we must ask what protections do prospectuses provide that the OM exemption does not? Like OMs, prospectus offerings provide no mechanism to ensure investors will not lose some or all of their money. Therefore, why are they presumed "safer" than those products offered by an OM? It is only in theory, and not in practice, that the inordinate amount of disclosure provided by a prospectus benefits investors. Prospectuses and the financial statements relating to public companies may be well understood by both regulators and the legal community but they are effectively too complicated and too lengthy for average investors to understand. Given the overwhelming amount and complexity of information contained within a prospectus, investors often choose to "sign here" and forego reading the disclosure materials provided. We feel that this "over disclosure" is in many cases paramount to no disclosure at all. We feel that the amount of disclosure being provided to investors needs

No.	Topic	Comment
		to be completely re-analyzed with a sufficient amount of disclosure being provided to all investors as opposed to copious amounts of impenetrable disclosure being provided to "unsophisticated" investors and none being offered to those that are "sophisticated". In addition, there should be a requirement for basic disclosure of the nature of the investment, the market need that is being addressed, the use of funds, the risks, the competition, etc. The CSA should prescribe the items to be disclosed but not the form of disclosure. The issuer may already have all of these items covered in a Business Plan and should not then have to re-write it to fit into some regulatory disclosure format. If a stand-alone document, this should take no more than five pages, although most issuers will aim for a document that is more comprehensive. But if the requirement is too broad, the line and cost differential between prospectus disclosure and exempt disclosure will become blurred. Create a short form standard document that outlines the "offering" in plain English with minimum requirements such as, but not limited to, risks and liquidity restraints that must be distributed as part of the evaluation process. We feel very strongly that issuers accessing exempt markets need to have better disclosure of financial matters continuously and not just at the time of offering and that management of issuers need to provide more transparency and communication to investors during the investment time horizon. Save for the OM exemption, the very basis of prospectus-exempt investments is that eligibility is not based on or created by disclosure. We suggest that implementing risk factor disclosure would present a fundamental conceptual change to these exemptions. The possibility of adding a disclosure element raises the question – what level of disclosure would be required? If it is close to OM-level, why maintain an exemption separate from the OM exemption? If it is less than OM-level disclosure, will it offer any added protection to the subscriber or just create reliance on less than complete information and lead to more misrepresentation claims by investors. Make it mandatory that issuers/dealers in exempt markets have their offerings go through an approved third party due diligence process producing a research report with a rating. It should be mandatory that dealers provide the research report to their clients. [The commenter] recommends that the CSA mandate a brief and easy-to-understand disclosure form for all exempt investments. This form could describe the eligibility requirements for an accredited investor, his or her most significant statutory rights with respect to the purchase, as well as the unique risks involved in an exempt market investment. The form, however, should be concise—not exceeding two pages—and written in plain language. This will not only promote consistency across the exempt market, it will also serve to: • encourage investors to read, and better enable them to understand, the information being disclosed; • help investors, who mistakenly believed—or were persuaded to believe—that they meet the eligibility criteria, to understand that they are ineligible to participate in an exempt market investment; and • inform investors about their right to rescind their agreement to participate in a prospective exempt investment, despite meeting the qualification thresholds. • Risk Acknowledgement Statement – Investments that utilize the MA or AI Exemption should be accompanied by a simple acknowledgement statement requiring the investor acknowledge that they understand and accept the risk of the investment. We would also recommend that the OM exemption, as is currently available in BC, should be maintained. Risk acknowledgement form: Prior to the purchase of a product pursuant to our proposed additional MA and AI exemptions, the individual investor must sign a risk

No.	Topic	Comment
		acknowledgement form. The use of a risk factor disclosure document required to be signed by the investor will provide regulators with further assurance that the investor has read and understood the risks. This document would provide the dealer with a degree of protection in regard to allegations of misconduct. Such a form is already used as the basis for exemptions by the British Columbia Securities Commission.. The exempt registrant would then report the purchase to the regulator as an exempt market transaction and provide the dealer (and the issuer, where appropriate) with a copy. It would need to be delivered to the securities regulatory authority within 10 days after the distribution. Including a Risk Acknowledgement Requirement. Certain provinces, such as Saskatchewan, permit investors to participate in certain exempt distributions (e.g. under the Family, Friends and Business Associates exemption) if they sign a "Risk Acknowledgement Form" in which they acknowledge the risks of a prospective investment. In other jurisdictions, such as British Columbia and the Maritime provinces, this option is available to investors under the OM exemption. A form 45-106F4 that has been present in all exempt market investment documentation I use is very clear. I have never had an investor try to cruise by that form without stopping to read it when completing a subscription agreement. It always gets an investor's attention, as it should. The same or similar form in all private investment subscriptions can ensure that investors realize the importance of disclosure and accessing helpful resources in making their choices. A form where the investor waives their right to use of an intermediary such as a registered, independent exempt market dealership might be appropriate. Another form that lists the categories of disclosure could be acknowledged by an investor, too.
Minimum Amount Exemption		
	Is a prospectus exemption based on a minimum investment amount appropriate?	Having a minimum amount to invest does not provide any assurance of sophistication on the part of the investor. At most, the size of the investment is an indicator only of the investor's ability to withstand financial loss. This exemption is susceptible to being used inappropriately by individual investors and parties seeking to raise capital since it simply requires a person to raise the amount, by unspecified means. The MA exemption is impossible to rationalize at any amount and should be abolished rather than reset. The MA exemption implies *de facto* suitability (whether or not correct from a legal perspective, many advisors begin with an assumption of suitability when an investor is willing to invest $150,000 in a single security). There are numerious situations where the KYC and suitability assessment process is greatly reduced for orders in excess of $150,000 based in some way on this argument. One of the rationales behind the exemption is that, given the level of investment required from the investor, he or she would have the ability to negotiate terms and obtain additional information or protections with respect to the investment – i.e. he or she has negotiating leverage given the level of investment. Based on that rationale, the amount of $150,000 may be insufficient. The MA exemption is premised on an investor having one or more of: a certain level of sophistication, the ability to withstand financial loss, the financial resources to obtain expert advice, and the incentive to carefully evaluate the investment given its size. The monetary threshold of $150K continues to ensure these underlying premises are met. The erosion to the base amount over time has not changed this fact. The $150K amount continues to offer appropriate protection.

No.	Topic	Comment
		This exemption creates the unintended consequence of investors investing $150,000 in a single investment when a much lower amount would have been more appropriate. In other words, the MA exemption engenders the very behaviour (i.e., portfolio concentration in private, illiquid securities) that these rules are designed to prevent. The minimum amount rules can actually increase an investor's risk. By imposing a $150,000 minimum investment, the current rules can force investors to make larger investments than they would otherwise feel comfortable making, as it is the only way to access this attractive market. These investors would be better served if they could make smaller investments in a single issuer, thereby diversifying their portfolio. Great harm has been inflicted on retail investors by the MA exemption. If one of the mandates of the CSA is to reduce risk to retail investors the number one place to start is by eliminating that requirement that investors who neither meet the income nor asset thresholds be forced to invest a significant amount of $150,000 or more, most likely borrowed against the equity in their homes. Rather than a minimum amount, common sense dictates that certain retail investors should be limited to a maximum amount which they could place in one investment, somewhere in the $10,000 to $25,000 range. By changing the minimum of $150,000 to a maximum of $10,000 to $25,000 the CSA would most likely eliminate the complaints of retail investors losing their homes or life savings. Individuals entering or in retirement may be particularly vulnerable if they have accumulated significant amounts of capital but rely on these funds, and the income that these funds generate, to sustain them in retirement. These investors may need extra protection as they may have an illusion of financial sophistication (afforded in part by the MA exemption itself) but lack sufficient expertise to make informed investment decisions about exempt market products. Such investors are also more likely to be targeted by investment advisors soliciting investments in unregulated opportunities such as those available under certain exemptions. Minimum investment amounts may also foster a perception of unfair advantage being given to a certain group of investors. [Our] view is that the MA exemption does not assure investor sophistication and may not be in the best interest of the individual investor. In the case of institutional investors, their total assets are typically much larger and would therefore have the ability to withstand financial losses. Further, institutional investors are generally more sophisticated and have access to in house professionals and/or consultants who are sophisticated and experienced in investing. An alternative qualification criteria for individual investors should be that they have the relevant sophistication and investment experience. One of the outcomes of the MA exemption is that $150,000 is an arbitrary number that does not consider the risk of the investment, especially when "it may have made more sense to invest only $50,000". The CSA should consider an alternative exemption to the minimum exemption, rather than indexing or increasing this exemption.
	Should the MA exemption be retained in its current form? How much should the minimum investment threshold be increased or	The exemption should be retained in its current form. The exemption currently represents a sufficient amount of money and as such would appear to preclude the majority of the public from using it, especially when one considers the median incomes and wealth of Canadian households. Further, if an individual is disposed to invest such a substantial sum of money in an exempt-market investment, the onus should be on the individual to protect himself or herself. The threshold amount should be lowered by 50%. Anyone who invests $75,000, whether in a consumer purchase or an investment should be expected to do some research. The investor has to do his or/her own research and should not rely only on advisors. Investors need to be enabled to make their own decisions, based on better disclosure by issuers and sales people. The threshold amount should be dropped to $20,000 when the exempt market product is distributed through a financial advisor who is registered with an exempt market

No.	Topic	Comment
	decreased?	dealer and the product is managed by a registered portfolio manager and comes with an Offering Memorandum. We recommend retaining it or reducing it. Consider reducing it to $25,000, coupled with disclosure requirements and limits. The MA exemption should be retained, but be modified to a lower minimum investment threshold of $50,000. As an alternative to repealing the MA exemption, lower the amount below $150,000 or allow it to be spread over several investments. The amount invested could be capped at a percentage of an investor's net worth or income (i.e. 10%) If the MA exemption is retained but modified, where a Portfolio Manager is involved with the purchase, the threshold value should be based on the lesser of: (a) a lowered threshold minimum amount of $25,000; or (b) a specified percentage of the investor's portfolio size (i.e. 5%). The investor should also be provided with a risk acknowledgement form. There are significant problems with the use of the MA exemption that would justify its elimination or a significant increase in the $150,000 monetary threshold. There appears to be a good argument to increase the minimum in relation to what the current value of the 1987 $150,000 is in today's dollars to $250,000. As an alternative, perhaps a two tiered system should be contemplated, for example a minimum investment amount of $150,000 for individuals and $250,000 for institutions. The MA exemption should be abolished or at least made scalable and reflective of the investor's sophistication, resources and risk tolerance. The somewhat arbitrary "one size fits all" model may be highly prejudicial to the interests of some investors who are growing their holdings or have diversified in ways not recognized by present regulations. While scalability based on income, sophistication and/or net worth would introduce a further layer of subjectivity to the suitability process, with guidance, exempt market dealers are capable of managing such a system. The MA exemption should be removed. The ability of an investor to raise $150,000, without reference to their income, assets or actual ability to sustain such a significant loss presents significant potential investor protection issues. The MA exemption, designed to demonstrate an ability to withstand loss, may in some cases result in investors actually taking on more risk than is advisable in order to be eligible to use the exemption. This exemption should be retained until there is clear evidence that dealers are using this exemption in an abusive manner. Raising the dollar limit to at least $250,000, adjusted annually for inflation, would help prevent a large number of investor complaints. This amount should not represent more than 10 % of an investor's net worth.
	Should the threshold for the MA exemption be adjusted for	No, however the MA exemption should be periodically reviewed to ensure the underlying assumptions are still correct (ie that the amount invested is still significant enough to conclude the purchaser is sophisticated). Inflation mostly tracks households' costs of living and has little impact on financial assets. A better choice might be the national rate of increases in household financial

No.	Topic	Comment
	inflation?	assets or the national rate of net increase in household income or some ratio of financial assets to average household financial assets. It is not apparent that indexing the threshold to inflation serves any purpose other than to regularly and consistently increase the threshold. This may do no more than continually erode the pool of potential investors who qualify for the exemption, which reduces the value of the exemption to issuers. It is not clear how inflation, which is primarily a consumption related measurement (it erodes purchasing power and asset values), should have any application to the threshold amount. The impact of adjusting thresholds by inflation (no matter which inflation measurement is used) would be to impose a double reduction in the number of qualifying investors; inflation would erode the capital they have available to invest and the increase in thresholds would further remove them from the marketplace. …Since salaries have not increased significantly in recent years, and wealth creation opportunities have been limited, it would be artificial and detrimental to raise the threshold by this metric. We very much doubt that the threshold would be decreased by a deflationary trend. There should not be any adjustment for inflation. If it is determined that the exemption should be retained then it is better to maintain the current minimum amount for consistency rather than pick another arbitrary number that fails to provide the right measure of protection for investors. The MA exemption should be adjusted for inflation. Alternatively, provide for a periodic (every 5 year) increase to reflect inflation or economic growth over that period. The MA exemption has been premised to a certain extent on an investor's ability to withstand financial loss. At a minimum, the current threshold of $150,000 should be adjusted for inflation. As the consultation document notes, the $150,000 threshold set in 1987 is equivalent to over $265,000 in 2011 dollars. Yes, the MA threshold should be adjusted periodically for inflation. However, we believe there is some advantage to having a stable, well-known, "round number" for the threshold. Accordingly, we do not believe that it is necessary to adjust the threshold annually. Instead, we would suggest adjusting the threshold upwards or downwards to reflect inflation (or deflation), whenever changes in the consumer price index would justify a larger incremental change, such as a change of $2,500.
	Should the MA exemption be repealed?	**No, the exemption should not be repealed** A number of commenters did not support repealing the MA exemption. Some of the reasons given included the following: • We see it being used on a regular basis and it is considered by our issuer and investor clients to be a useful prospectus exemption. • Why would we unnecessarily deny Canadian issuers access to capital. If the underlying assumptions to the MA Exemption remain true, why wouldn't we provide Canadian issuers with as many alternatives as possible to raise capital and create value for their shareholders. • The objective should not be to unduly restrict capital raising but rather, improve its functioning by promoting risk awareness through investor education and self-evaluation. • If the proposed changes are implemented, fewer investors will be qualified to provide capital to businesses which need it. We urge that the CSA not increase the costs to small and medium size businesses by making it more difficult to access required capital. For this reason, the existing exemptions ought not be repealed or increased in the absence of pressing need for public protection. • This exemption should not be repealed unless other changes are made to current or new exemptions to accommodate capital raising by SMEs. • The MA exemption should not be eliminated as there are certain situations where this exemption is of use. • It provides a means for sophisticated investors who are not accredited investors to participate in the exempt market. Concerns with this exemption are best dealt with through disclosure and registrant involvement.

No.	Topic	Comment
		<u>Yes, the exemption should be repealed</u> A number of commenters supported repealing the MA exemption. Some of the reasons given included the following: • Transaction size alone does not imply any level of sophistication on the part of the investor, nor any suitability as to the appropriateness of the transaction. • An arbitrary number of any amount is a poor gauge of suitability. It should be the individuals responsibility and choice to investment the appropriate amount for them based on their financial situation. • We feel strongly that the MA exemption, regardless of amount, is in conflict with prudent investing principles such as diversification and suitability. • No amount of money invested should imply a level of investor sophistication to which no disclosure from an issuer is required. An exemption based solely on this criteria creates no real basis of protection for an investor no matter what their level of investment is. • The establishment in 1987 of the limit of a minimum investment of $150,000 was arbitrary, as a proxy for sophistication, but does not actually provide any assurance of sophistication on the part of the investor. In the context of investment in pooled vehicles the minimum investment forces an investor to concentrate their investment in one strategy, thereby increasing risk, when the ability to diversify an investment of this size across several strategies would better serve the investor by reducing risk. • The MA exemption may encourage an investor to invest an amount in a prospectus-exempt security that is not in line with their investment objectives and could cause them to take on more risk than they would otherwise wish. • The MA exemption is impossible to rationalize at any amount and should be abolished rather than reset. • A dollar investment alone, even one higher than the present threshold, is not a proxy for financial sophistication. • We feel that in a majority of cases where non accredited investors are relying on this exemption, a bulk of subscription funds come from a home equity line of credit. Individuals should not be putting their homes at risk simply because that is the only way they can get enough money together to meet an exemption (and get into a given investment) for which they otherwise would not qualify. • It does not serve any particular purpose except to magnify the impact of mistakes made by individuals. • A minimum purchase amount does not have any relevance on an investors’ sophistication. • It would be preferable to repeal the exemption. An OM exemption or requiring the involvement of, a registrant are better approaches. The MA should be eliminated in the face of the substantially increased responsibilities for investor protection undertaken by exempt market registrants. As part of their KYP/KYC processes, exempt market dealers consider the degree of issuer disclosure, whether the investor is an individual or institution, the complexity of the security and whether or not the issuer is a reporting issuer. All of these factors contribute to the ultimate suitability decision. In jurisdictions where the MA exemption is the only exemption available to allow non-accredited investors to participate in the exempt market, that repeal of the exemption would potentially reduce capital raising ability unless the exemption were replaced with something that continued to allow non-accredited investors to qualify. The AI exemption, because of its strict definition that relies on financial assets, would still serve to disqualify many investors who may otherwise be suitable for certain exempt market securities. Yes the MA exemption should be repealed. In all cases, exempt distributions should provide full risk disclosure to prospective purchasers. At a minimum, registrants have an obligation to recommend only suitable investments and would prefer to see all registrants held to a fiduciary standard. We do not believe that individuals should be shut out from the exempt distributions market, nor that securities of reporting issuers, when issued as exempt distributions, should be treated any differently than securities of non-reporting issuers.

No.	Topic	Comment
	Should individuals be able to acquire securities under the MA exemption?	We have nothing against well meaning individuals nor want to make their lives any more difficult but the sad reality is that the securities evaluation is simply a very complex issue and most, almost 99% of the individuals we come across have neither the education nor the time to evaluate such securities. We therefore advocate that individuals be severely restricted from participating in the exempt market unless there is a bona fide gate keeper. They should have either a managed account with a PM who is then accountable for decisions. Individual investors are less likely to possess the skills necessary to do their own due diligence. This would be solved by requiring an independent analyst report. Limiting it to institutions would have a negative impact on capital raising – angel investment in Canada would end. Individuals in Canada, regardless of their financial sophistication, can easily and quickly open up a discount brokerage account on their own and buy options, derivatives, foreign exchange contracts, use leverage (margin) etc. I believe that they would be better off having access to professional managers, even if those managers offer their products by way of the exempt market. People that have the freedom to do dumb things on their own should have the freedom to choose to hire a professional to help them. Limiting the use of the MA exemption by individuals would be a regressive step and tend to impose a financial penalty on an individual wishing to use the exemption, namely the cost and trouble of forming and capitalizing an investment entity that would itself be entitled to use the MA exemption. Individuals should continue to be entitled to acquire investments under the MA exemption, provided that at least financial and other basic issuer information is furnished to the investor. Individuals should have the same criteria as do institutions as we would expect a person to be more diligent with their own finances than an institution. If individuals are allowed they should not be allowed to put more than a certain percentage of their assets into any one security. This would lessen the impact of having made a wrong decision. The MA exemption should be repealed in regards to individuals regardless of any potential impact on capital raising, which we feel would be minimal as most who rely on it are likely also accredited investors. Protecting those who are not accredited investors (but have access to $150,000 through an inheritance, home equity line of credit, etc.) would be suitable exchange for the minute decrease of capital accessibility. The goal of investor protection must be as important a consideration as the ease of capital access for issuers. In our view the MA exemption is not an appropriate basis for trades of exempt securities by individuals. In practice we do not generally see a strong enough logical connection between the size of the investment made and the rationale for the investment being made on an exempt basis. We do not generally see a connection between financial sophistication, financial knowledge or ability to withstand loss and the amount of an investment. A fixed exposure limit, perhaps based on a specific percentage of the investor's investable assets, might be a useful addition. This would serve to restrict the individual's investment under the MA exemption to no more than that limit amount.

No.	Topic	Comment
	Are there alternative qualification criteria, other limitations or other issues with the MA exemption?	Provisions should be put in place to ensure that investors are not leveraging their primary residence in order to meet this exemption's criteria. Should a non-accredited investor wish to participate in an exempt offering they should have a maximum amount they can do (for example $10,000 as permitted under the OM exemption) not a minimum amount. We believe that the maximum should be raised to a reasonable number (not much more than 10K, say 15K – 20K) and the minimum should be eliminated. Require disclosure on the fact that the investment is considered an alternative investment because it is long-term, illiquid and high risk. The MA exemption should be based on several factors and not just on fixed financial resources. Investment experience should also be a factor. Many jurisdictions in Canada permit exempt distributions under the Family, Friends and Business Associates exemption or the OM exemption which include the provision of a risk acknowledgment form. The adoption of a risk acknowledgement form requirement is a credible alternative to eliminating the MA exemption altogether, but we question whether a signed risk acknowledgement provides investors with sufficient protection. Members of the public often sign risk waivers without fully understanding them. The intent behind and requirements of the MA exemption are not problematic. Some investors will sell liquid assets to obtain cash in order to use this exemption. It may be beneficial to the investor to be able to invest the minimum amount in smaller increments rather than in one lump sum. Give investors the option of investing the minimum amount in one or more tranches over an aggregate period of not more than 180 days, with each tranche being on the same terms and with respect to the same securities. In addition, the subscription agreement in respect of the aggregate investment should require that if the investor does not invest the full amount required to qualify for this exemption, the issuer will promptly return the full amount of the investment to the investor, without interest or penalty. The main concern with permitting investment over several tranches is that the issuer would be unable to access the funds until after the last tranche, which would create access to capital concerns for the small issuers. It may be appropriate to limit the number of times that this exemption may be used by a single investor, especially as this exemption is intended to be used in a situation where the investor does not qualify as an accredited investor. A "financial means" test would be a more appropriate basis for exemptions than a minimum amount. However, relying on dealers or issuers to conduct such a test is implausible for many reasons, including possible conflicts of interest. Such a test could possibly be administered by requiring a registered financial advisor to conduct the test on his or her clients, as an extension of existing KYC requirements. Any investor, regardless of their level of wealth or income, can purchase securities of an exempt distribution provided that the purchase represents only a small portion (up to 10%) of their net assets (excluding primary residence) unless a risk acknowledgement is executed by the investor and the registered advisor acknowledging the level of investment and the implications and risks were fully considered. We believe that all securities should be issued with sufficient disclosure of risk factors to allow the buyer to make an informed decision. Where a registrant is involved in selling these securities, we believe that the registrant has a fiduciary obligation to act in the best interests of his client, the purchase of those securities. Finally, in exploring this issue, we have concluded that the risks of getting poor advice or self-serving advice are at least as significant as any risk inherent in any security, whether prospectus-qualified or an exempt distribution. As important as the "protections" afforded to investors by having prospectuses approved by regulators are, if the investors don't read the prospectuses and rely solely upon an advisor's recommendation, the

No.	Topic	Comment
		regulation of the standard of advice is as important as the prospectus, if not more so. It is important to point out one way in which the MA exemption is "gamed". It is not uncommon for issuers to sell securities to an investor based on the MA exemption, only later to redeem a portion of that investment so as to "top up" a future investment from the same purchaser that would otherwise be less than $150,000 (for example, an investor invests $150,000 in January, and has another $50,000 to invest in June so the issuer redeems $100,000 in May, which, along with the "new" $50,000, adds up to a new $150,000 investment in June.) While this may not violate the letter of the law as it pertains to the MA exemption (assuming that both investments were in fact determined to be suitable), but it clearly violates the spirit of the exemption, and the example supports the elimination of the MA exemption. There should not be any further limitations added to the MA exemption. The previous Ontario-only rule, eliminated in 2001, did not require, as the new rule does, that the $150,000 be in the form of cash. Any further limitations on this rule would be detrimental to the ability of exempt market issuers to access capital and investors' ability to access to a wider range of investment products. With respect to the MA exemption, we note that the $150,000 threshold appears elsewhere in NI 45-106; for example, under the asset acquisition exemption in section 2.12 and the exemption for top-up investments for investment funds in section 2.19. If it makes sense to do away with exemptions based on an arbitrary dollar amount, this approach should be carried through to other affected sections of NI 45-106.
	Is the AI exemption an adequate alternative to the MA exemption?	Yes, the AI exemption in its current form is an adequate alternative. The use of the AI exemption is a better tool than this limit of size. If the MA exemption was repealed and the AI exemption was retained in its present form, the ability of small and medium sized enterprises to raise capital would be less seriously impacted than otherwise. While not in my view an entirely satisfactory alternative to the MA exemption, the AI exemption would be an alternative in perhaps a majority of cases. From our involvement with current clients that are raising funds, there will likely be a minimal impact on capital raising if the $150,000 threshold is increased, as this exemption is very seldom relied upon. Most investors that have $150,000 to invest in a single issuer may fall into the AI category. However, there is the concern that individual investor has $150,000 in their RRSP's, RIF's, etc. that they use for the investment or they are able to borrow against the equity in their primary residence to reach the $150,000 investment threshold. These investors should be protected. We believe that other exemptions – all of which have some connection to the stature of the investor or prospectus like disclosure particularly the OM exemption – can be redrafted to ensure that capital raising can continue while ensuring adequate disclosure. Some provinces have dollar limits on Offering Memorandum but it seems inappropriate to obviate anyone paying $150,000 the right of action for misrepresentation and disclosure available in that exemption yet it's only available to small investors. Repealing the MA exemption would likely have little adverse effect on the ability of issuers to raise capital as there are a sufficient number of other exemptions, such as the AI exemption, which can be used. We believe in most cases an investor who can afford to invest $150,000 in a single issuer is in all likelihood an accredited investor.

No.	Topic	Comment
		Given that the vast majority of persons availing themselves of a MA exemption would fit within the current definition of an accredited investor (since a considerable amount of financial assets or income is needed to meet the MA exemption threshold), we do not think it likely that the repeal of the MA exemption by itself would materially affect issuers' ability to raise capital. We utilized the MA exemption only until we were able to utilize the AI exemption uniformly across all jurisdictions in which we were raising capital. It is our opinion that the elimination of the $150,000 threshold exemption would have little to no impact on capital raising initiatives. As practitioners in the financial industry, we have successfully raised capital through private placements for more than 100 issuers using only the AI exemption. No. Other exemptions should be introduced. No. It classes out an entire population of investors and again only looks at assets for sophistication analysis. The MA exemption should be eliminated and the AI exemption could be broadened to include additional criteria, especially educational background to include those with professional designations. If the current $150,000 threshold for the minimum amount were to change (increased or repealed), this would not have a big impact on our ability to offer pooled fund strategies to our institutional clients as our standard minimum investment amount far exceeds the current MA exemption threshold. We typically depend on the AI exemption given our clients are institutional investors. We would use the MA exemption only to the extent that a client does not meet one of the accredited investor definitions.
Accredited Investor Exemption		
	Do you agree with retaining the AI exemption and definition of "accredited investor" in their current form? Are the current financial thresholds appropriate?	**<u>Yes, retain in its current form</u>** If an investor has $1 million of net investable assets or makes $200,000 individually or $300,000 with a spouse for the past three years, they have the ability to withstand some risk – should they choose. We believe the AI should be maintained in its current form, with no increase to the income or asset thresholds. We would, however, recommend that an additional category for "finance professionals" be added to the definition of accredited investor in order to permit those persons to invest who have a degree of financial acumen, but not necessarily the income or net worth set out in the AI exemption. We are of the view that the AI exemption is an integral part of fundraising for issuers in the Canadian marketplace. It is our view that changing any threshold amounts in the AI exemption would unnecessarily restrict the ability of Canadian investors from participating in exempt product offerings and that would unnecessarily interfere with the ability of market participants to access capital. It is our view that the current thresholds are appropriate metrics for determining the suitability of an investor to subscribe for exempt market product offerings. We do not see a need to tighten the (AI) dollar criteria but would rather see the criteria expanded to include of the value of pension plans and investment real estate,

No.	Topic	Comment
		which can be substantial assets for some investors. Yes. The investor has the protection of its remedy for misrepresentation under common law. We would suggest considering statutory civil remedies for the investor, similar to those provided in Ontario for a misrepresentation in an offering memorandum. Given the underlying rationale for the AI Exemption we do not believe that a requirement to provide additional disclosure in connection with its use should be necessary. We would suggest, as above, that consideration be given as to whether secondary market liability should be extended to acquisition of securities pursuant to a private placement and this may largely deal with any information-based issues in connection with private placements by reporting issuers. We do note that, in certain provinces, if an "offering memorandum" (as defined for purposes of the Act) is provided that statutory rights of action will apply. One clarification you may wish to consider is that if an offering memorandum is provided in such provinces to any investors in that province that it be provided to all investors in that province who will then have the resulting statutory rights of action. This would ensure that all persons have the same information base and have the same rights of action in connection therewith. If an investor qualifies with more than $1M in financial assets, and $5M in total assets, then in our opinion, that person either has sufficient knowledge or can afford to consult with someone who has the knowledge in a cost effective manner. Raising the limits would only create havoc for fund raising without any real benefit as it would be protecting a very small percentage of people who have accumulated that level of wealth, but are not sufficiently sophisticated to either manage such investment based on their own investment acumen or engage qualified financial advisors to provide such advice. I support the existing financial criteria set out in the AI definition but I believe the definition could be expanded to allow lawyers, accountants and others with investing experience to also be considered AIs. In the current economic environment, we should be assisting issuers in accessing capital from sophisticated investors as opposed to further limiting the available capital. We advocate strongly that any changes to income and asset thresholds be made only in unison with any changes to the in the U.S. *"accredited investor*" exemption. Moreover, if a change is made to further restrict the AI exemption without a similar change being made in the U.S., we would be concerned that it would affect "*angels*" and "*super angels*" investing in Canadian start ups. If changes are made to increase the income and asset thresholds in both countries, we do believe that there would be a general adverse impact on start up fundraising. While we are not qualified to make a general statement, in our own experience, we have not seen that this exemption has been abused or that problems have resulted. In respect of the AI exemption, we also support the retention of the exemption, and the existing income and asset criteria set out in sections (j)–(m) of the definition of Accredited Investor in section 1.1 of NI 45-106. These criteria, which enables retail investors to participate in the exempt market, provides issuers with a very important means of raising capital from investors with the means and desire to invest in such securities. As discussed in the Notice, the income and asset criteria may not always provide a consistently accurate proxy for sophistication. It is, however, very difficult to develop a definitive test for sophistication that is administratively efficient and practical to apply. We do not support the application of the alternative qualification criteria proposed in the Notice. The criteria, which includes investment experience, investment portfolio size, work experience and education is potentially subjective, resulting in regulatory uncertainty, inconsistent application and regulatory risk for those purchasing and selling securities in reliance on the exemption. The income and asset criteria provide an objective test that has a reasonable link to sophistication and the investors' ability to withstand loss.

No.	Topic	Comment
		With respect to the income requirements associated with the AI exemption, we find that these thresholds also present a genuine hurdle for potential subscribers. This exemption is among the most widely used in Saskatchewan. We suggest that raising the limit significantly would have a substantial negative impact on capital raising markets in Saskatchewan for non-reporting issuers. However, there are many investors – people such as professors, engineers, entrepreneurs, scientists, and teachers – knowledgeable people who would like to invest in such companies (I regularly get inquiries from such people) but are not allowed to do so because the barriers are too high. A reduction in the income test for accreditation would substantially increase the pool of available capital to these startups. At present, entrepreneurs can access less than 1% of the population. Many things about the AI exemption should remain unchanged such as the definitions for qualifications. For example, the specific entities listed and individuals who have been registrants or registered with an SRO of financial bodies should always be qualified as accredited investors. We think the required changes relate to j) and k) of the list of definitions of a qualifying accredited investor under NI 45-106. Several definitions within j) and k) need to be addressed in relation to the AI exemption. One issue is the exclusion of all real estate in the definition of "net financial assets". We believe a better assessment of someone's ability to withstand a loss should include a measure of real estate that is not an individual's primary residence. Investment real estate should be included in the financial assets assessment since it is often regarded as a portion of one's investment portfolio. Another issue lies in the calculation of income and financial assets as it pertains to a business or privately owned corporation. In an effort to maximize tax efficiencies, should an individual be penalized for limiting the salary he takes from his business? As the sole shareholder of a business, are the assets of the business not theirs? We think that these assets and incomes should have a place in evaluating the over-all picture of an individual who wants to invest in an Exempt Market Product. We do 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. We agree 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. **<u>No, do not retain in current form</u>** No. Income and asset thresholds as a measurement of suitability are arbitrary. The participant of the registrant with respect to the suitability of a particular trade is more important than the arbitrary threshold; this allows the registrant to determine that a trade is not suitable, even though the income and asset thresholds are satisfied. No. We believe that due to requirement for exempt market dealer registration has elevated the role and responsibilities of the exempt market advisor to a degree that makes these exemptions unnecessary. We are of the opinion that the current AI qualification criteria should be simplified. For example, the requirement to have $5 million in fixed assets should be eliminated because in theory, an investor who has that much in fixed assets may not have much in liquid assets. A failed investment may create financial stress for an individual who in turn may be forced to liquidate their only fixed assets (i.e. their house which in today's market could easily be worth $5 million). For individual investors, the AI

No.	Topic	Comment
		exemption should be determined by liquid assets or net income or a combination of both. The AI Exemption should also be retained, but be modified with a) a reduction in the Income Test from the current level of $200,000 per annum to a new level of $100,000 per annum; b) a reduction of the net assets minimum for corporations, limited partnerships, trusts and estates from the current level of $5 million to a new level of $1 million. A modification should be made to the exemption itself whereby issuers are required to provide a prescribed minimum amount of disclosure to prospective accredited investors. This exemption should be retained in substantially its current form, with minor modification. The current requirements to be designated an accredited investor represent sufficiently high financial thresholds so as to guarantee a sufficient level of financial sophistication. Consider whether an additional avenue of qualification could be made available. For example, those who otherwise satisfy the requirements of an “eligibility advisor” within the meaning of NI 45-106 should be given accredited investor status, even though they may not meet the existing financial thresholds. The rationale is that if advice given by an “eligibility advisor” to a client is sufficient to allow the client to meet the test of an “eligible investor” within the meaning of NI 45-106, then logically the person who is the “eligibility advisor” must be in a position to assess the merits (or lack thereof) of a potential investment, and therefore should be able to protect themselves. No. We believe the honour system of declaring oneself accredited could be improved to ensure investors are making true representations. Requiring more substantive proof and information to support the claim would result in only those that truly meet the standard using the exemption. We believe that limiting an investor’s exposure to any specific exempt distribution to a small percentage (up to 10%) of their net assets, excluding primary residence or imposing a requirement at that level mandating a specific risk acknowledgement form is executed along with the registrant or seller involved is a better approach to limiting investor risk. If the AI exemption was reduced – income $100,000 to $125,000 range, financial assets $250,000 to $350,000, net worth not including principal residence to $500,000 to $750,000 there would be a retail business in Ontario. The minimum net worth test should be lowered by 50%, from $1M to $500,000. Net worth needs to include all real estate. The home an investor lives in is a major asset. This is currently excluded in the definition of “financial assets”. The total household income should be lowered to a total of $150,000 or $90,000 per person. It should allow a person to “self declare” income for example a business owner that might draw only $60,000 from his business could declare himself “accredited”. There are two concerns with the current definition of financial assets. The first is the exclusion of real estate within the definition of financial assets. The definition excludes all real estate, even income-generating real estate that is not the investor’s residence. This means that a retired investor with a $3,000,000 apartment building generating $180,000 a year in income (assuming no other assets) is not accredited. However, if the investor held the same apartment building through a corporation, the shares could be included under “financial assets” and he would be accredited. This result cannot be what was originally intended by the AI exemption. The second issue is with the definition of the word “securities” in the definition of financial assets. The rule does not expressly exclude non-tradable securities (such as shares in a private corporation), however it has long been assumed that “securities” means “liquid securities”. This means that a person who privately owns 100% of the shares in a $2,000,000 transportation company (and doesn’t take a reported salary in excess of $200,000 per year) would not be accredited (assuming no other assets or income). Since there are no exemptions that allow the company itself to invest based on its annual profits, this means there would be no way for the owner of the company to invest, whether on his or her own account or on that of the company. One might argue that the two examples above are specifically designed to show the weakness in the

No.	Topic	Comment
		rules and are not common. In fact, they are very common.
	Should the income and asset thresholds be adjusted for inflation?	**<u>No, the thresholds should not be adjusted</u>** The thresholds were set high originally and should not be increased. No – current levels are fine – the percentage of the population who qualify as AI is still very small. Indexing numbers is a headache as forms will continually need to be updated. Inflation prices are not necessarily appropriate measures – they do not necessarily measure increases in income. The thresholds should now be lowered, particularly if the investment is in an investment fund, to annual income of $100,000 or net financial assets of $500,000. No the threshold should not be indexed to inflation but rather assess periodically. The income and asset thresholds should be cut in half. While we understand that these numbers have not been reviewed in a long time (since being adopted by the Securities and Exchange Commission in 1982), we feel that suddenly adjusting any number to three decades worth of inflation will have a detrimental impact on the capital markets. Accordingly, we submit that exemptions should be reviewed no more than once every five years. We further submit that the current thresholds under the existing exemptions are sufficient today and were set too high when implemented. **<u>Yes, adjust for inflation</u>** To our knowledge, these thresholds have not been revised or adjusted (for inflation, among other things) in the 10 years since the OSC's introduction of the exemption. At a minimum, the net income threshold should be revised upwards to at least $245,000 - $443,000 to account for inflation. Once properly re-established, we would strongly support (in fact, see no principled reason to disagree with) an automatic process to adjust periodically this limit to account for inflation. This would reduce the cost and administrative burden of reconsidering the level, yet again, at some indeterminate point in the future. The financial and net asset thresholds should also be revised to both exclude investors' primary residence. We believe that the current threshold amounts should be retained and be indexed for inflation. Further to our comments above, we believe that the thresholds for income and assets should also be adjusted to reflect inflation. For example, we recommend that the CSA raise the income threshold to $245,000 to adjust for inflation since 2001, the year the Ontario Securities Commission first adopted the exemption. This is a sound recommendation if it is published annually (rounded off to the nearest $1000) and eliminates the continual revisiting of the issue by the regulators. Many industry participants undoubtedly find it difficult to plan strategically when exemption limits are continually revisited and/or changed.
	Should individuals be able to acquire securities under the AI exemption?	Absolutely, individuals should be able to acquire securities through a registrant under the AI exemption. We also feel that individuals not at the AI level ought to be able to invest as well through other exemptions including the OM exemption to allow regular Canadians a chance to diversity their portfolios. We believe that all securities should be issued with sufficient disclosure of risk factors to allow the buyer to make an informed decision. Where a registrant is involved in selling these securities, we believe that the registrant has duties to know your client and civil liability through an agent – client relationships and recommend that be

No.	Topic	Comment
		increased to a fiduciary obligation to act in the best interests of his client, the purchase of those securities. We think the exemption works fine for individuals and it is essential to capital raising in our industry that access to that exemption be available to individuals. The assumptions underlying the exemption are the same for individuals as they are for institutions (and are possibly even more accurate for individuals). That is, I would expect a person to be more diligent with their own finances than an institution. With respect to some of the possible limitations to the "accredited investor" exemption mentioned in the Consultation Note, [the commenter] offers the following comments for consideration: • limiting the "accredited investor" exemption to non-complex products would lessen the need to assess the sophistication of the investor, but could unnecessarily limit truly sophisticated investors from being able to participate in complex product offerings; • limiting the "accredited investor" exemption to non-individual clients falsely assumes that non-individual clients are always sophisticated and are always more sophisticated than individual clients; • a rule limiting the "accredited investor" exemption to non-individual clients may be vulnerable to circumvention through incorporation by the individual investor.
	Should an investment limit be imposed on AIs that are individuals?	Generally, no. However we support a cautionary statement by the issuer that no more than 10% of net worth should be allocated to alternative investments as of benefit. No – an upper limit would be very damaging to fund formation and to the financing of private companies, which depend on investment from AIs, often in very sizeable amounts. [The commenter] goes beyond the AI criteria and also uses a "percentage of net worth" test to ensure that the amount being invested is prudent. This will vary by the nature of the investment but will generally not exceed 5% for a start-up investment. Even here, judgment is required as it may be fine for someone with $20 million dollars in financial assets to invest more than 5% in a single investment. We strongly recommend that the size of a particular investment be limited to a certain percentage of investors' net worth in order to encourage diversification and to reduce investors' downside exposure to an amount that they can "afford" to lose. This is even more important given the absence of both a statutory fiduciary duty in Ontario on the part of financial service professionals and a reliable way to link investors' income or assets to financial expertise. A form of proportionality test would limit an investor's losses to amounts that are more manageable for that particular investor. Given our view on the need for a registrant in these situations, an imposed limit is not in keeping with each unique individual's financial situation, risk tolerance, investment objectives and time horizons. Each investor is unique and arbitrary limits are penalizing. No, there is such a diversity of products with varying risk characteristics available in the exempt market that this would impose an arbitrary restriction on investors or portfolio managers acting on their behalf with no offsetting benefit. For example, there is a material difference in the risk of a broadly diversified pooled fund compared to that of a speculative start-up but a single investment limit would treat them as identical. In fact, an investment limit could deny investors' access to a wide range of investment strategies that they or their portfolio managers might deploy that would improve their portfolio construction from both a risk and tax management perspective. If there are concerns with the Al exemption in respect of specific types of offerings, then requiring either the involvement of a registrant who has an

No.	Topic	Comment
		obligation to recommend only suitable investments to the purchaser or a portfolio manager is the best remedy. Individuals in general do not have the sophistication to make such decisions. At a time when we did not have 9,000 CFAs in Canada alone, it may have been appropriate to look to means such as a financial threshold to establish such criterion. But, now with a proliferation of CFA and other worthwhile designations, it is appropriate to tilt the rules towards a skills-based model. We advocate that inside fully managed accounts being acted upon by advisors, the minimum be set to as small as $5,000. In addition, we advocate that if individuals are allowed to act on their own behalf then it be lowered to $25,000 so that if individuals make mistakes then they are more manageable. [The commenter] encourages the CSA to consider incorporating into the “accredited investor” exemption an additional requirement that the investment represent no more than a specified percentage of the investor’s total portfolio or net assets—perhaps in the range of 5 to 10%. Such a requirement would ensure that the potential loss of the entire exempt investment is one that the investor could sustain without dire financial consequences. It would also serve the related policy goal of discouraging undue concentration of an investor’s portfolio in a single, potentially illiquid security.
	Are there alternative qualification criteria we should use?	In the case of a security of a listed issuer sold through a non-SRO member firm AND securities of issuers not listed and sold through an SRO member the criteria should be as follows: (a) registrant has duty to act in best interest of client/fiduciary duty; and (b) a registrant ensures the investor meets a “sophistication” test, which requires that an individual meets two (2) of the following four (4) criteria: i. investor has carried out transactions of a significant size (at least $2,500) on securities markets at an average frequency of, at least, ten per quarter over the previous four quarters; ii. size of investor’s securities portfolio exceeds $1,000,000; iii. investor works or has worked for at least one year in the financial sector in a professional position which requires knowledge of securities investment and has passed the Canadian Securities Course; or iv. investor is a registrant, registered with one or more securities regulatory authorities in Canada. v. In the case of securities of non-listed issuers sold through a non-SRO member intermediary the criteria should be: (a) a registrant has a duty to act in the best interest of the client/fiduciary duty (b) a registrant ensures the investor meets the “Sophistication test” described above, and (c) independent certification of the investor’s fulfillment of the Sophistication test be obtained – from a third party with no financial interest in any transaction. The basic guideline (but not rule) should be 10% of net worth can be invested into any investment by AIs. As we understand the regulations, the *financial test* definitions are designed to treat spouses as a single investing unit – we believe this should be re-assessed or a requirement applied that would require the non-investing spouse to concur in writing with any investment falling under the AI exemption. AI exemption should include educational, work, and investment experience. There should be a minimum such as complete of the Canadian Securities Course or equivalent courses.

No.	Topic	Comment
		The CSA should provide checklists of what information is expected to be requested and kept on file in order to determine whether an investor qualifies as an AI. We have no issue in excluding an investor's principal residence from the Financial Assets Test, however, any other real estate such as a cottage, farmland or other investment property should not necessarily be excluded. There is also increased concern over excluding other real estate from the Financial Assets Test since baby boomers are retiring and may no longer readily satisfy the Income Tests under the AI exemption, thus further shrinking the pool of available investors. The CSA should include other real estate assets (other than an investor's principal residence) in the Financial Asset Test. The CSA should allow illiquid securities in the Financial Asset Test. If the CSA does strongly believe in increasing the threshold, perhaps a graduated threshold may be considered. For example: i) investors, alone or together with a spouse, with a financial net worth of $1 million - $1.999 million or net income of certain amounts may be able to invest any amount up to a maximum of $150,000 on a particular investment; ii) investors, alone or together with a spouse, with a financial net worth of $2 million - $4.999 million or net income of certain amounts may be able to invest any amount up to a maximum of $300,000 on a particular investment; iii) investors, alone or together with a spouse, with a financial net worth of $5 million or greater or has net income of a certain amount may be able to invest any amount with no maximum on a particular investment. Does the security strike a market based NAV? We believe that this factor captures the risk difference between a true "capital raising" venture and a pooled fund. The NAV requires a daily/weekly pricing mechanism based on an independent, verifiable consensus such as an index. It is a public valuation of a private distribution which is subject, in certain jurisdictions, to an annual audit. The opportunity here is to expand the qualification criteria to include investors on the basis of their ability to adequately assess investment risk and portfolio suitability rather than seeking to curtail investor activity in general. We would encourage the CSA to consider recommending a new prospectus exemption that would essentially provide that the prospectus requirement would not apply to a distribution of a security by an issuer to an individual if the individual investor and the issuer were able to satisfy certain criteria. Such criteria would include that (i) the security has an acquisition cost to the investor of not more than 5% of such investor's total financial assets before taxes, but net of any related liabilities; (ii) the issuer provides ample warning to the investor of the speculative nature of the investment and the potential restrictions on transfer of the security; (iii) the issuer requires each investor to respond to questions demonstrating an understanding of the level of risk applicable to the investment and the risk of illiquidity associated therewith; and (iv) the investor provides the issuer with reasonable evidence of its net financial assets. As the CSA notes, a number of factors, including potential regulatory changes, could justify the development of new qualification criteria, including whether the issuer of the security is a reporting issuer, the security is novel or complex, disclosure is provided to investors (including risk factor disclosure), and if a registrant is involved in the distribution who has an obligation to recommend only suitable investments to the purchaser. Redefining financial assets to include investment properties, whether income producing or not, as a financial asset (exclusion of the primary residence). Ownership and income from a business should be included pro rata to the ownership as provided by the shareholders list, to be included in financial and fixed assets and income. Create a short form standard document that outlines the "offering" in plain English with minimum requirements such as, but not limited to, risks and liquidity restraints that must be distributed as part of the evaluation process.

No.	Topic	Comment
		We respectfully suggest that consideration be given to amending the AI rules to provide for different classes of investors, each with different levels of investor protection needs and ability to withstand loss. Staff of the CSA would have to make the precise formulations as to the classes, but the broad outlines could be as follows: - permitted clients along the lines set out in NI 31-103. The intention would be to exclude most individual or retail investors. This class of market participants (banks, brokers, institutional investors) whose function is to move capital around should be able to do so relatively unimpeded, since they have sophistication and market power to obtain the information they need and thus have little need of regulatory intervention to correct for information asymmetries; - seasoned accredited investors: mostly, those accredited investors, excluding the permitted clients, described in NI 45-106. These investors could be high net worth individuals and smaller enterprises, but they are generally not persons involved in the capital markets on a day to day basis. These investors should be able to demonstrate in some fashion, through some combination of net assets, investment or other relevant business experience and educational attainment (a CA, MBA, CFA, CSC) that they have some degree of sophistication and ability to withstand loss. The seasoned accredited investors should have fewer constraints on their investment activities; however, the rules could make certain products, such as very complex structured or securitized product, off limits. - Novice or junior accredited investors: there should be a new category for accredited investors who wish to participate in the exempt market, but are in need of additional constraints, by limiting, for example, the amount such investors can invest in any given year and in any given investment. This could be reinforced by limiting the amount that an issuer could raise in reliance on this exemption. In our view, there should be no objection to master trusts being considered to be accredited investors from a policy perspective (given the fact that they are essentially similar vehicles to the other entities set out in the definition). We recommend, in the interests of clarity, that the following additional type of entity be added to the definition of accredited investors: “a person that has been established by pension funds referred to in paragraph (i) for the benefit of the beneficiaries of such pension funds.” We also assume that this entity would be considered to be purchasing as principal even though has many ultimate beneficiaries (but this is not different from an investment fund), but if there is any doubt about this, we urge the CSA to add a reference to this new accredited investor being deemed to be purchasing as principal for the purposes of section 2.3 of NI 45- 106. In the context of the establishment of a private equity or investment real estate fund, often structured as limited partnerships, investors are sometimes advised to invest by way of family trusts for the purposes of optimizing tax efficiencies. Such family trusts are often structured as discretionary trusts for the benefit of the living and future lineal descendants of such individuals. Beneficiaries of such family trusts are the beneficial owners thereof. Sub-paragraph (t) of the definition of “accredited investor” provides an exemption for entities in respect of which all of the owners of interest, director, indirect or beneficial are persons that are accredited investors. Since a young child, or further, an unborn child, both of which would routinely be beneficiaries of the family trust, is typically not an accredited investor, the family trust is by definition not an accredited investor. Further, since the family trust is established as a single purpose entity, it does not have any financial assets which would allow it to qualify under a different sub paragraph of the definition of accredited investor. We are thus left with the anomalous result that a wealthy individual or family which would otherwise easily qualify as an accredited investor but for the structure of its investment, cannot avail itself of the exemption. This, despite the fact that all of the policy concerns surrounding the AI exemption would suggest that the family trust be able to rely on such exemption. In order to rectify the described anomaly, we would suggest that the definition of trusts used in Section 2.4(2)(k) of NI 45-106, be used in the context of the AI exemption, namely, that in order for a trust to qualify as an accredited investor, the requirement should be that a majority of the trustees are accredited investors. Education or work experience as a basis for qualification would not be practical and would be difficult to implement. The only possible exception could be an individual’s work experience within the investment industry as allowed for in the U.K. With respect to the issue raised in the Consultation Note regarding alternative qualification criteria for individuals, such as education, investment experience and work

No.	Topic	Comment
		experience, [the commenter] is supportive of the adoption of such alternative criteria as useful indicators of investor sophistication. However, imposing a general requirement to determine that the investor is sophisticated may not be practical unless there are objective criteria for making these assessments. Fundamentally, an investor who does not have (1) a certain level of sophistication, (2) the ability to withstand financial loss, (3) the financial resources to obtain expert advice, and (4) the incentive to carefully evaluate the investment given its size, should not be able to invest in reliance on these exemptions. Our recommendation would be that an individual who is a "professional" in the securities industry, having access to all of the expertise within his or her firm should be permitted to rely on the AI exemption. The trading frequency test applied in the UK is not, in our view a true measure of an individual's abilities as an accredited investor; such a test only identifies that investor as being a frequent trader. More consistent with our recommendation is the UK test as to whether the person has worked in the securities industry for a minimum period of time, which we would consider an appropriate qualification for the AI exemption. The criteria should be limited to one of: asset amount; income amount; education; work experience; or investing experience. We do not believe that additional qualification criteria should be added for individual investors under the AI exemption as placing further criteria on investors or start ups would, we believe, adversely affect capital raising. We feel the current criteria in place are adequate and that consideration should be given to including individuals with certain professional designations and work experience under the definition of accredited investors. We would submit that the other possible criteria suggested, as set forth in the Consultation Note, such as educational background, work experience, investment experience and the like should not detract from the availability of the existing Exemptions based on financial wherewithal but may, if determined appropriate, be considered as an independent basis for availability of an exemption. We are of the view that an income and asset test is the appropriate basis for the AI exemption and an adequate proxy for an individual investor's sophistication, education, work or investment experience. The "bright line" income and asset criteria means that it can be easily relied upon with certainty by both issuers and investors. Attempting to base the exemption on an individual's education, work or investment criteria will cause uncertainty and be problematic to apply. In addition, certain of the criteria suggested to supplement or replace the asset and income test do not in our view represent appropriate proxies for sophistication (for example, completion of the Canadian Securities Course). Other proposed criteria, such as work experience in the financial industry, are unduly restrictive and will deny access to the exempt market to persons who do not meet such limited criteria but are otherwise sophisticated. We therefore are of the view that the AI exemption should be retained in its current form and be based on an income or asset test for individual investors. We note that the bright line test based on income and assets and the current thresholds are also internationally comparable.
	Should AI status be certified by an independent third party?	Certification of an investor's AI status by an independent third party should not be required. Perhaps a choice by the investor of i) verification of their status by the investor (i.e. tax returns or month-end statements) or ii) certification by an independent third party. For non-brokered offerings, the CSA may instead require the issuer to obtain reasonable proof from the client such as a pay stub, T4 slip, or other documents.

No.	Topic	Comment
		A brief form available through securities regulators and any exempt market participant which, in one page, requires an investor to complete a worksheet that relates their net worth and/or income to the specific investment they are considering, both in terms of percentage allocation of their overall portfolio as well as a risk adjustment they derive themselves. Such a document, accompanied by reasonable back-up documentation (e.g. tax assessment, portfolio summaries, etc.) could be independently validated (e.g. notary style) by the investor without compromising privacy, and submitted along with their investment subscription for a particular investment. The exercise of completing such a document would be instrumental to the investor's clearer understanding of the suitability of any given investment and practically demonstrate both prudence and thoughtfulness in the investment decision-making process. We also support a requirement to have very clear disclosure in about the Accredited Investor criteria included in the subscription agreement, such that investors are clearly informed about the criteria that they must meet to use the exemptions. We suggest the level of disclosure be similar to what was included in sections 2 and 3 of OSC Staff Notice 33-735 *Sale of Securities to Non-Accredited Investors,* which provides details as to what is and is not included in the income, financial asset and net asset tests. Regulators should more clearly define what is considered adequate supporting documentation for AI status. We suggest issuers be obligated to obtain from investors a copy of one or more of the following: (a) Most recent Tax Return; (b) Notice of Personal Tax Assessment; (c) balance sheet certified by an independent accountant; (d) letter from independent accountant or legal counsel as to whether the individual meets the income , financial asset requirements and/or other criteria required to be considered an Accredited Investor. In any event , all dealers selling to AI investors should have documented procedures for ensuring unsuitable investments or financing are not recommended to retail investors. We do not believe that compliance with the qualification criteria under the AI exemption should be considered during the current review of the AI exemption. The logistical realities of providing a "*certification*" would, in all likelihood, be cumbersome. For example, a "*certifier*" might be required to review underlying financial statements and tax returns of the individual in order to satisfy himself that the qualification criteria are met. We do not believe this would be practical and would seriously impede the ability of an investor to rely on this exemption. A requirement of independent certification of qualification criteria would be a significant disincentive to individuals taking the benefits of the AI exemption. It would also be intrusive into the private affairs of individuals and would be resented by many, who would consider their own acknowledgements should be sufficient, especially taken with their risk acknowledgement forms. A third party certification requirement would also add cost to the individual investor, as well as impeding the smooth flow of the capital gathering process. Recommend a certification requirement (by way of notarized document, for example) at or prior to point of sale, either by a senior representative of the vendor firm or an independent third party such as a lawyer or accountant. It would make every one's job easier if we could get Accountants or Lawyers to certify the AI for individuals. We advocate that it be considered. Yes, however independent third party certification should come with a benefit to the investor in the form of simplified subscription documentation. Further, a variety of certification options should be available with the intent of harmonizing with investors' current financial activities (e.g. banking, tax reporting, etc.) rather than an arduous or expensive process that is completely independent of regular financial activities.

No.	Topic	Comment
		Absolutely not. The logistics, administration and cost associated with this idea far outweigh the perceived benefits. If an investor chooses to be dishonest as to their status and the investment fails, then they hopefully learned a lesson about following the rules. Why should we tailor our securities laws in an effort to protect those who willingly falsify documents? Personal accountability of the investor has to come into play at some point. No. Many accredited investors, particularly corporate executives, do not have legal and accounting relationships so the cost of establishing a relationship, providing evidence of income and assets and obtaining a certification will not be trivial. Even those who have relationships will be forced to provide financial disclosures and incur costs that they would rather not. During our consultation process, we canvassed whether market participants would prefer if a third party should be required to certify and/or determine whether an investor satisfied the applicable tests for individuals under the AI exemption. The main concerns raised included the unnecessary burden it would place on market participants and investors, and uncertainty around the frequency of certification/verification (e.g., would it have to be done for every transaction, quarterly, annually, etc.) and whether that would impact the sales cycle and delay timely completion of transactions. A further concern relates to the diminishment of the responsibility of the registrant in an exempt market transaction and whether regulatory oversight would be enhanced by effectively placing the accountability for investor qualification outside the scope of regulators by delegating it to third-parties who are non-registrants. Most issuers when conducting a private placement of securities provide each investor with a subscription agreement, investor questionnaire and certificate. Issuers often rely on these documents alone to satisfy themselves that an investor meets the financial requirements of an accredited investor. As has been frequently demonstrated, this is not fool-proof in confirming that a particular retail investor is truly an accredited investor. Regulators should require issuers to directly confirm that the statements made by each investor as to their status as an Accredited Investor are indeed correct to the best of that issuer's knowledge and that the statements have a reasonable air of being accurate, consistent and credible. Issuers should be required to take proactive steps when engaging agents to sell their securities to accredited investors. These steps include: (1) explaining the importance of compliance with the AI exemption; (2) providing clear instructions to the agents; (3) supervising the agent's efforts; and (4) independently confirming each investor meets the definition of an accredited investor. As identified in the Consultation Note, one issue with the AI exemption is ensuring compliance with the qualification criteria. We do not support the CSA's suggestion to require an investor's accredited investor status to be certified by an independent third party, such as a lawyer or qualified accountant in order to improve compliance. There are already safeguards built into meeting the obligation of ensuring exempt securities are only distributed to exempt purchasers. For instance, NI 31-103 requires registrants to collect KYC information, which includes the client's financial circumstances. Similarly, registrants must take reasonable steps to ensure that a particular investment is suitable for a client. In addition, NI 31-103 imposes a record keeping requirement to support KYC findings. In our view, mandating a certification requirement would add another layer of costly compliance that is unnecessary given that registrants already have existing registrant obligations and safeguards. PMs, by virtue of their relationship with clients, already have extensive knowledge of clients' financial situations. In addition, it is not entirely clear that this type of certification would be feasible given that lawyers and accountants will only be aware of the assets/liabilities that an investor discloses. We recommend that any non-compliance identified with meeting the AI exemption qualification criteria should be dealt with through the enforcement regime, as regulatory concerns about market participants following securities laws fall within the enforcement ambit and should be viewed separately.

No.	Topic	Comment
		The CSA should bolster and make public its compliance functions with respect to reliance on the AI exemption to ensure only those who qualify purchase exempt securities. Several decisions of securities regulators from the past year support the contention that some issuers/dealers are failing to properly apply the AI criteria (see *Skyline Apartment REIT*, *MRS Sciences*, *Maple Leaf Investment Fund Corp and Aurora Re* cases). CSA needs to seriously consider who will be responsible for qualifying investors, who will be responsible for adherence to the available exemptions and finally, what will motivate them to do so.
	Are there other investment limitations we could impose?	Using a questionnaire to assess entrepreneurial and industry experience, unrelated to any specific investment, which ascertains these traits among potential investors is an alternative that could assess education and experience if additional investor protection is sought. Mandatory membership in an independent dispute resolution process (IIROC arbitration might be an example if its $500,000 limit was increased). The CSA may also want to consider including benchmark(s) for financial expertise, such as the size of an investor's securities portfolio, number of trades made per quarter, educational background or professional credentials, or the adoption of a basic questionnaire to assess purchasers' financial sophistication. We are of the view that introducing additional requirements would unnecessarily complicate qualification and change the nature of these exemptions, which work well in their current form. Adding a proportionality test of net assets, exclusive of investors' primary residence. We strongly recommend that the size of a particular investment be limited to a certain percentage of investors' net worth in order to encourage diversification and to reduce investors' net worth in order to encourage diversification and to reduce investors' downside exposure to an amount that they can "afford" to lose. This is even more important given the absence of both a statutory fiduciary duty in Ontario on the part of financial service professionals and a reliable way to link investors' income or assets to financial expertise. The limitations I could understand would involve fixing maximum percentages for investments of investors' total financial assets, require financial and other basic issuer disclosure and perhaps enhanced risk acknowledgement, all as stated above. No. Should this exemption remain, individuals should have the same criteria as do institutions as we would expect a person to be more diligent with their own finances than an institution. We believe that regulators could rely on the advisor-investor relationship to better protect individuals who are active in the exempt market. By its very nature, the AI exemption assumes the individual investor has the sophistication and financial wherewithal to both make independent investment decisions and absorb losses. There is no more cost-effective way to provide clarification on the nature of such risk than with the advice of a competent advice provider who is also a registrant. If the investor wants professional third-party advice, then he or she should consult a professional financial adviser. The addition of a requirement for a risk acknowledgement form will highlight for registrants, dealers and individual investors that the responsibility for the investment decision lies with the investor.

No.	Topic	Comment
Impact on capital raising		
	Role of small and medium sized enterprises (SMEs) in Canadian capital markets	…SMEs employ millions of people and contribute to new job creation. After the family, friends and close business associates exemptions the only ones SMEs can look to are the MA and AI exemptions (an offering memorandum is often too costly or burdensome in relation to the amount of money to be raised for seed stage companies, and OM isn't available in Ontario anyway). I also see the need of small and medium sized businesses for access to the investment capital on a cost effective basis. If the proposed changes are implemented, fewer investors will be qualified to provide capital to businesses which need it. I urge that the CSA not increase the costs to small and medium sized businesses by making it more difficult to access required capital. A reduction in the income test for accreditation would substantially increase the pool of available capital to these startups. At present, entrepreneurs can access less than 1% of the population. If the MA exemption was repealed and the AI exemption was retained in its present form, the ability of small and medium sized enterprises to raise capital would be less seriously impacted than otherwise. While not in my view an entirely satisfactory alternative to the MA exemption, the AI exemption would be an alternative in perhaps a majority of cases. The AI exemption is a key building block to the formation of capital into funds that finance emerging companies, growth companies and larger more established businesses. While our experience is as legal counsel to issuers and underwriters, it would appear to us, at least anecdotally from our experience, that the AI Exemption has been a very valuable tool in the capital raising exercise by oil and gas and other resource issuers. We do note that it has also provided access to private placements by retail and other individual investors that might not otherwise have been offered participation in private placements, including of non-listed issuers, which otherwise would have been available only to institutional investors. Further, in the case of issuers that are either not large enough or for other reasons cannot raise money from institutional investors, we would, based again on our anecdotal experience, suggest that the AI Exemption has been utilized as a valuable tool for raising capital. In our experience, the AI exemption is relied upon to a much greater extent than any other capital raising prospectus exemption. We are concerned that any material increase in the monetary thresholds associated with the AI exemption would restrict the availability of private financing and significantly impair the ability of small and medium sized issuers to raise capital, which would, in our view, have a detrimental effect on the broader economy. By severely restricting the number of people who can invest in the Exempt Market, the rules are limiting the ability of private corporations to raise capital without the expense and time of a formal prospectus. This works against one of the regulatory regime's mandates, namely, the oversight of efficient and orderly markets that allow for the capitalization of industry. This is especially critical at a time when volatility and uncertainty make it difficult for issuers to raise capital in the public market, and venture capital funding has been suffering a 10-year drought in Canada. The AI exemption is one of the most frequently used exemptions. However, the AI Exemption has the advantage over the MA Exemptions as the investor can determine the level of exposure or financial risk; it is not set at an arbitrary high number.

No.	Topic	Comment
		The AI exemption is vital to small and medium sized issuers, who frequently rely on that exemption for access to private capital, which is essential to their development. In our experience, this is particularly true for start-up issuers, including oil and gas exploration and development companies, oil and gas service companies and issuers engaged in the development of technology in Western Canada, and junior mining exploration companies and high-tech start-ups in Eastern Canada. We have acted for many such issuers who sourced the initial capital required to acquire assets and commence business through private placements undertaken in reliance upon the AI exemption. Many of those organizations have gone on to become significant contributors to the economy in Canada, particularly in Western Canada. A considerable number of those issuers have also generated significant returns for their investors. Alberta has an active accredited investor community; many of the members of that community have made significant returns in the oil and gas industry and are now providing seed capital to facilitate technology innovation, an area that has traditionally struggled to find funding in the early stages. The CSA should consider easing restrictions on the exempt market to promote access to capital and financing of small and medium size companies in particular while ensuring satisfactory investor protection safeguards are in place. As discussed below in more detail, while we acknowledge the often competing policy objectives of investor protection and capital market efficiency**,** we are very concerned that imposing additional restrictions on the use of the current AI exemption will have a deleterious effect on capital formation for early stage companies, particularly those in the technology space. We believe that companies are increasingly being required to compete for resources, financial or otherwise, on a global basis and that it is very important, particularly in a North American context, that the regulatory environment in Canada not be seen to be more restrictive and less flexible than the regulatory environment in the United States. We also suggest below that, not only should you not be further restricting available exemptions, but you should be considering adding further exemptions, such as those relating to "*crowdfunding*", in order to assist early stage companies in raising capital.
	Impact if thresholds for MA and AI exemptions were changed	Raising the minimum amount may have an adverse impact on early stage capital raising and may preclude knowledgeable investors from making good investments. Maintaining the MA exemption is critical for early-stage capital if the AI thresholds are to change. Other exemptions are currently inadequate to support vibrant early stage SME capital markets. We strongly oppose any changes to the AI exemption that would reduce access to the exemption because it would make capital raising more difficult. If the $150,000 exemption was removed, as we and others suggest, issuers will cry foul. To be fair, doing that alone would impair their ability to raise capital in the short-term. We argue that this change should be offset with a new exemption based on an investor's maximum exposure to the exempt market. It is our opinion that changes to the income and asset thresholds would impact capital raising initiatives by reducing the pool of eligible investors (this assumes that the changes are to increase income and asset thresholds). Institutional lending will be impacted for our business. Any fund that has assets less than that of a potential new threshold amount will not be able to join with other funds in a syndicate manner. This increases the exposure of the so called smaller fund as they will not be able to share the risks on larger deals and will strictly have to underwrite their own deals subject to 100% of the inherent risk. Notably, a large number of the "small" percentage that has $150,000 to invest should already be categorized as an accredited investor. This said, and should this be raised alongside the AI asset thresholds, there would be significant impact in provinces such as Ontario, as the already small pool of investors allowed to invest would

No.	Topic	Comment
		grow even smaller. An increase of the MA threshold has the potential to have a negative effect on the ability of certain issuers to raise capital. A greater concern would be if the minimum thresholds of the AI exemption were adjusted upward as a far greater amount of issuers (particularly in Ontario) rely on this exemption. If the AI threshold were to be increased, consideration would have to be given in Ontario toward possibly adopting the OM exemption so as to create an alternative to the AI exemption for issuers in raising funds in that province. We believe that any substantial increase in income and asset thresholds would dramatically reduce an already limited exempt market and substantially impair the growth in the pooled funds market in Canada. This will reduce the opportunity set of investments for sophisticated investors, decrease the portfolio management vehicles available to improve diversification, stifle innovation and impair competition in an already oligopolistic industry. Raising the minimums for the accredited investor will not provide additional protection and will negatively impact efficient and vibrant capital markets. We have recently gone through the licensing process under NI 31-103 to protect investors from unfair and improper or fraudulent practices. It is too soon to see if these changes have positively affected the market and provided greater protection. By increasing the minimums for the accredited investor at this time we will be unable to determine which program is providing the benefit. From our involvement with current clients that are raising funds, there will likely be a minimal impact on capital raising if the $150,000 threshold is increased, as this exemption is very seldom relied upon. … However, if the AI thresholds were increased as well, there would be a significantly detrimental impact on capital rising, particularly in the provinces that do not have the OM exemption.
Other issues		
	Consultation and review process	It is preferable to consult at an earlier stage rather than later in the rulemaking process, once draft rules have already been prepared. Early, conceptual consultation should lead to a better, more appropriate regulatory framework, and we encourage more early consultations by the CSA. The public consultations were dominated by industry participants. The absence of consumer input undermined the consultation process. The regulators should engage in pro-active solicitation of investor advocates when engaging in these types of consultations. There needs to be increased regulatory transparency on policy development generally. The Consultation Note does not explicitly acknowledge, nor specifically request comments on, the widespread use of these exemptions to distribute securities of investment funds. The use of the exemptions in that context raises very different issues than their use by industrial or commercial issuers for true “capital raising” purposes. The CSA should consider the two situations separately. The explanation for undertaking a review of the MA exemption and the AI exemption at this time lacks sufficient detail as the aspects or features of the “global financial crisis” and “recent international regulatory developments” that raise concerns with reference to these two exemptions are not clearly explained. Absent some direct relevance to the Canadian capital markets, CSA resources could perhaps have been better directed to more immediate and pressing issues of concern to investors, distributors and issuers. This review is premature given the recent adoption of NI 31-103 and the new obligations imposed on dealers under that instrument.

No.	Topic	Comment
		Rather than focusing on the MA exemption and AI exemption, a more comprehensive review of the exempt market framework is required. Other rules, especially restrictions on resale of exempt market securities, should also be re-examined. We recommend that every three years the CSA review the “Accredited Investor” exemption provisions in their entirety and to engage in further rulemaking to the extent it deems appropriate for adequate investor protection.
	Harmonize exemptions across Canada	We strongly suggest that the CSA prioritize the elimination of local rules and carveouts included in NI 45-106 and other instruments in connection with any changes that are proposed. These variations increase the costs and complexity of raising capital in the exempt market. We are not aware of any valid policy rationale that would support treating purchasers in the Canadian exempt market differently based on their jurisdiction of residence. Certainly the costs of prospectus level disclosure have not gone away, so the original rationale for the exemptions appears to continue to apply. For these same reasons, there would appear to be no need to add any additional criteria to these exemptions although the CSA ought to look into introducing additional exemptions from the prospectus and registration requirements based upon investment experience or education or work experience – so as to make a number of new exemptions available for sophisticated, trained or experienced investors. The CSA, provincial regulators and SROs should develop a harmonized approach to risk and should refrain from identifying all exempt markets as inherently risky unless it can provide evidence that is inclusive of all offerings in the exempt market. It follows that the CSA should attempt to stratify the exempt market as undoubtedly not all exempt market products are or should be classified with the same risk profile. A stratification of products would allow for more appropriate risk assessment and management by those that offer such products and would provide greater and more accurate disclosure for investors. The CSA should also consider how to approach the risk assessment of exempt products that are managed by independent, qualified registrants (e.g. IFMs, PMs). Registrant oversight and management for exempt products should be viewed as equally credible as that oversight provided by the same registrant for prospectus based products. We believe that if the AI exemption is retained in its current form, it should at the very least, be harmonized across Canada and PMs in Ontario should qualify as the “accredited investor” for fully managed accounts for investments in investment funds such as pooled funds. A key area for harmonization is the managed account exemption in Ontario. One of the classes of accredited investors in NI 45-106 is a registered adviser acting for a fully managed account (a discretionary account) in the account holder’s jurisdiction. Under this exemption, the purchaser of the security (the account holder) doesn’t need itself to be an accredited investor. The advisor is deemed to be the accredited investor. However, a portfolio manager acting on behalf of a fully managed account in Ontario is not an accredited investor when purchasing securities of an investment fund. Ontario has carved out this exemption when the exemption relates to securities of an investment fund such as a pooled fund. As such, a managed account in Ontario may only invest in an investment fund on an exempt basis where the holder of the account either personally qualifies as an “accredited investor” as defined in NI 45-106 or invests $150,000 in the investment fund in accordance with the MA exemption in section 2.10 of NI 45-106. This unharmonized section of the AI exemption makes it increasingly difficult for registered firms managing assets of clients located across different provinces, where in most parts of the country this is permissible. The practice of allowing investment managers to act as an accredited investor for their clients for investments in pooled funds should be consistent across Canada and it remains unclear as to why the OSC continues to have policy concerns. We recommend that Ontario re-evaluate the investor has actively hired a portfolio manager (who should qualify as the accredited investor). Like other provinces, PMs in Ontario have the proficiency, registration status and requirements, financial strength and human resources to support and properly service such accounts. We recommend that NI 45-106 be amended to allow fully managed accounts in Ontario to qualify as “accredited investors” for purchases of securities in investments funds such as pooled funds.

No.	Topic	Comment
		Harmonize NI 45-106 to provide regulatory consistency across Canada; specifically, a registered portfolio manager ("PM") acting on behalf of a fully managed account in Ontario should qualify as the accredited investor when purchasing securities of an investment fund; 2. For clients not dealing with a PM, maintain the status quo for AI exemption but add modifications to increase flexibility for investors using a PM; 3. Repeal the MA exemption for investors using a PM or lower the threshold amount; and 4. Independent certification of the AI exemption qualification criteria should not be mandated. No threshold amounts should apply in respect of a distribution of investment funds to accounts that are managed by a portfolio manager on a fully-discretionary basis. That is currently the situation in all provinces, other than Ontario, as a result of the application of paragraph (p) of the definition of "accredited investor" set out in NI 45-106. We feel strongly that this should be made consistent across Canada by having subparagraph (p)(ii) repealed in Ontario. The threshold amounts should be at least doubled in respect of each exemption: in respect of the MA exemption, the threshold should be raised to at least $300,000; in respect of paragraph (k) of the "accredited investor" definition, the income test should be raised to at least $400,000 for an individual or, together with a spouse, $600,000. The CSA should adopt a national and harmonized definition of an OM and provide guidance on: 1) what is and what is not considered an OM for marketing purposes; and 2) whether certain marketing materials may be exempt from the OM requirement. One of the difficulties with conducting a private placement across Canada is the requirement to describe the statutory rights available to purchasers under certain prospectus exemptions, including the accredited investor and minimum investment exemptions. Typically these descriptions go on for pages, virtually guaranteeing that they will not be read. We suggest that the CSA adopt a uniform description of the statutory rights available to purchasers in the exempt market that satisfies the legislative requirements of all Canadian jurisdictions, in a similar manner as the statement of rights of withdrawal and rescission in item 30 of Form 41-101F1 *Information Required in a Prospectus*. We acknowledge that such a summary would need to address the differences in statutory rights that exist in different Canadian jurisdictions. We suggest, however, that the purpose of the requirement to describe these rights is to alert the investor that he or she has certain rights and they should consult a lawyer, not necessarily to provide the detail of these rights.
	Offering memorandum exemption	Consider implementing the OM exemption nationwide, with a prescribed form and risk acknowledgement statement – but remove the requirement to include financial statements in the OM where the issuer is an investment fund. Consider implementing an OM exemption for "eligible investors" modernized for amount and declaration based on asset or income tests on a sliding scale. There should be appropriate disclosure by the issuer as to risks, like in the current Offering Memorandum process. The OM process is not broken, although it needs amendment: it needs to lay out a business case in the OM or information sheet and its assumptions about the projected returns. This is missing in the OMs or project information sheets today. If those assumptions had been in the OM, those many failed companies over the last few years would have raised far less money as it would have been obvious that the numbers do not make sense given prudent real world assumptions. A limitation to consider is that an investor is allowed only 10% of his net worth into an Exempt Product investment as a guideline, with an option to override this in writing by the investor. It should not be a rule, only a guideline. A signed form, stating that an investor acknowledges he (or she) exceeds the 10% guideline should be introduced. The offering memorandum and prospectus disclosure of risk are insufficient and inadequate as disclosure. Focus should be on suitability obligations as defined in *Re Daubney*.

No.	Topic	Comment
		I have reviewed other examples of OMs that provide investors with a level of disclosure that is on par with the level of a prospectus. Both OMs and prospectuses contain statutory rights of rescission and investors can sue for a misrepresentation. Perhaps the CSA could consider an "OM exemption" that would allow smaller investment managers to access the Exempt Market provided that the OM contained certain mandated disclosures. In my opinion, from the perspective of Exempt Market fund managers, the reticence to operate as a mutual fund isn't the requirement to draft a prospectus or have it reviewed by the CSAs; rather, it is the ongoing cost associated with complying with the rules that apply to mutual funds. Ultimately, we would like the MA and AI exemptions to remain intact and the OM exemption extended into Ontario. By extending the OM exemption to Ontario, clients would benefit from enhanced disclosure and securities regulators would be in a position to clearly focus on the behaviour of dealers and issuers. In our view the model of the OM exemption and the Eligible Investor definition under it is the most appropriate policy direction to take for a variety of reasons. First, it levels the investor playing field across Canada. Currently, Canadians in most jurisdictions other than Ontario have far easier access to private markets than Ontarians. Second, it permits a certain level of investment ($10K) to be made by any investor, regardless of financial "eligibility" so long as certain other criteria are met, such as the delivery of an OM and the signing of a risk acknowledgement. Third, it offers investors the option of qualifying as "eligible" if they receive the blessing of an eligibility adviser as defined in s.1.1, in much the same way as the CSA is here suggesting that the Accredited Investor status be certified by a third party. Fourth, the income threshold is lower ($75K rather than $200K) and the net worth is lower ($400K rather than $1M Financial Assets) for an eligible investor than it is for an accredited investor, providing greater investor access to the exempt market at a time when the economy needs it and investors arguably want it. Ontario needs to adopt the OM exemption and remove the $150,000 exemption. The offering memorandum provides the general population with the ability to invest in opportunities which are potentially uncorrelated to market. Many people we speak to are looking for investments are not directly tied to analyst expectations, hedge fund positions, or the behavior of irrational market participants. They're looking for an opportunity to invest in small companies with simple business models where they have direct access to the principals – investments which are directly tied to the success of the business. While we understand the topic of this request for comment are the MA and AI exemptions, we would like to outline our strong disagreement with proposal (NI 41-103 Notice) *as referenced on page 5 [of the Consultation Note]* as eliminating securitized debt offerings from the Exempt Market through an OM would severely hurt the industry and its investors, and we also <u>do not</u> feel that the use of a prospectus specifically will improve the security of the investor, rather simply create a higher barrier to market entry. This leads us to the question of what protections do prospectuses provide that the OM exemption does not. Both provide disclosure but prospectuses more often than not contain disclosure that the majority of investors do not understand. The majority of investors will not take the time to read the prospectus and will rely on marketing materials in their judgement of an investment, unless an OM is provided with easy to comprehend transparency and explanation of the said business model. Securitized debt tools are utilized by many strong, performing businesses within the exempt market and <u>we strongly suggest</u> should not be eliminated. <u>We feel strongly</u> that securitized debt offerings should be allowed to continue within the exempt marketplace through the OM Exemption, and that the Province of Ontario should consider adopting said exemption. Drop the requirement for an IFRS audited financial statement for issuers below a certain threshold, say a sub-$100,000 opening balance sheet or sub $2M total raise target. The costs are prohibitive. Rules & disclosure need to be reasonably aligned with project sizes, as a restaurant that needs perhaps $250,000 investment for a refurbishment needs to be treated differently than a $20M+ real estate or resource play. Different guidelines, with more and more disclosure requirements for larger players and associated sales community), somewhat less regulations for smaller deals.

No.	Topic	Comment
	Fiduciary duty on registrants	All registrants who provide investment advice to retail investors should be subject to a fiduciary duty to act in the best interests of their clients. The current suitability framework is inadequate. The requirement of a fiduciary duty on behalf of advisors to safeguard investor interests is of critical importance in considering the exempt market because the current statutory thresholds are only crude proxies for financial sophistication and not substitutes for the personal interaction between advisors and their clients. The majority of Canadians are not sophisticated investors. Over a lifetime many Canadians accumulate substantial savings and most depend upon a registered representative to advise them on investments. Retail investors are generally not aware that the individual they depend upon for advice does not have a fiduciary duty and often may be a salesman with a limited range of products to sell.
	Exempt market dealers	EMDs are currently subject to less oversight, less regulation and do not form part of a scheme that provides compensation to investors in event of insolvency. EMDs that perform investment-dealer like activities should be required to join IIROC and not be permitted to avoid SRO oversight. EMD's should be prohibited from selling prospectus qualified securities such as mutual funds and exchange traded funds to accredited investors. Currently, EMD's are able to hold themselves out as full service financial product providers and sell the same products as MFDA and IIROC dealers without being subject to the same level of regulation and oversight. This creates an uneven playing field in the industry and additional risks for investors.
	Investor protection	Requiring EMDs that perform investment dealer like activities to register with IIROC would improve investor protection through closer supervision, heightened compliance and insolvency coverage through CIPF. In seeking to protect unsophisticated investors, broad mechanisms that exclude competent individuals should be avoided in favour of evidence-based, focused mechanisms. Focus on the practitioner or seller rather than the investors. For us, a firm whose primary business is in a foreign jurisdiction where the CSA member(s) cannot effect investigations/enforcement should be off limits to retail investors. We are concerned about seniors. The elderly, especially those with substantial savings, appear to be a designated target of unscrupulous "advisers" ; it is our view that special protections are in order. For seniors, capital preservation, dependable income /cash flow, time horizon, liquidity , de-accumulation profile, tax optimization and estate planning are key investment factors. The key to protecting investors, however, is to use the AI criteria in conjunction with an assessment of suitability, as is currently performed by a registrant through the Know Your Client and other processes. Without such a linkage, a company can accept an investor's life savings simply because they are "Accredited". This makes no sense. Investors in the exempt market are especially vulnerable because they do not have the benefit of regulatory oversight or access to full information regarding these investments. These investors could potentially be subject to a different (i.e. lesser) level of regulatory involvement if a fiduciary obligation were in place.

No.	Topic	Comment
	Examples from other countries	The U.S. requirements are most relevant to the Canadian market. We note that U.S. is only now moving to a regulatory regime similar to Canada's – i.e. requiring more advisors and investment funds to register and making the financial asset test for AIs exclude the principal residence. The U.S.SEC recently adopted an amendment to the accredited investor Net Worth standard which excludes the value of an individual's primary residence. This was done pursuant to Section 413 of the Dodd-Frank Act which stipulates that the SEC "shall adjust any net worth standard for an accredited investor, as set forth in the rules of the [SEC] under the Securities Act of 1933, so that the individual Net Worth of any natural person, or joint net worth with the spouse of that person, at the time of purchase, is more than $1 million (as such amount is adjusted periodically by rule of the [SEC]), excluding the value of the primary residence of such natural person…." Ref http://www.sec.gov/news/press/2011/2011-274.htm The CSA may want to consider netting out all real estate and illiquid, difficult to value and non-income producing assets such as fine art or jewelry from the Net Worth calculation (if this is not already the case). Regulations in the United Kingdom require investors to demonstrate expertise through, among other factors, frequency of investment transactions and practical experience in the financial services sector or related professions. The CSA could also consider allowing investors to demonstrate expertise, for example by adopting an online test or questionnaire to assess an investor's eligibility. In terms of alternative criteria for an AI exemption, we note that under the European Union's *Prospectus Directive* of May 30, 2001, which came into force in the United Kingdom on July 1, 2005, distributions to "qualified investors" are exempt from the prospectus requirements. The *Directive* allows Member States to choose to authorize resident individuals as qualified investors when they expressly ask to be so considered. Such individuals must meet at least two of the following criteria: investment experience: the investor has carried out transactions of a significant size (at least 1,000 euros) on securities markets at an average frequency of, at least, ten per quarter over the previous four quarters; investment knowledge: the investor works or has worked for at least one year in the financial sector in a professional position which requires knowledge of securities investment; or portfolio size: the size of the investor's securities portfolio exceeds 0.5 million euros. These "qualified investors" are listed in the Qualified Investor Register, which is publicly available (the information contained in the register may be delivered electronically only to issuers and other offerers of securities). In light of the U.K. model, many stakeholders will support additional criteria for accredited investors based on investment experience, or investment education, or knowledge similar to the EU's *Prospectus Directive*. Such criteria could include: investment experience (for example, the investor has carried out transactions of a significant size in securities markets at a given frequency); work experience (for example, the investor works or has worked in the financial sector in a professional position which requires knowledge of securities investment); or education (such as the investor has completed the Canadian Securities Course, achieved a CFA designation or has received an advanced degree in business or finance). The usefulness of the foreign examples is limited because there is no discussion of the registration regimes in these countries and other investor protection provisions that may be applicable.
	Northwestern exemption	We are concerned about the implications of the Northwestern exemption for investors and recommend that it be revoked given significant investor protection concerns. The "Northwest Exemption" should be reconsidered as it creates confusion for clients about the circumstances in which they have the protections offered by the exempt market dealer registration requirement, and it exposes clients to the risks of dealing with unregistered dealers without any corresponding public benefits.

No.	Topic	Comment
	Democratizing access to capital / "crowdfunding"	Confidence in capital markets are eroded by perceptions that the financial industry allocates the best investments to themselves and financial industry fees are excessive. See the *Entrepreneur Access to Capital Act* and related proposed legislation in the U.S. One proposal would cap company offering size at $1 or $2 million with certain conditions. Financial tests on individuals are limited. These bills balance an economy's need for early-stage capital with reasonable protections for investors more constructively than would excluding individuals from the definition of AI. If the US bills are passed, it would provide a competitive advantage to small businesses in the United States by enabling greater access to capital, and ultimately, positive impact and economic growth. Public support for fairer access to capital is evidenced by ordinary people providing capital for projects/businesses on websites such as Kickstarter and Kiva. This supports the argument that people at all levels of income/assets can make effective risk decisions.
	Educate investors	It is my belief that education and not regulations is the answer. Education sessions must be promoted by the financial services industry and the legal and accounting profession together with the regulators. It is key that we address these issues and make people aware that they should and must consult professionals. After all the rules are there to protect investors from scams and not knowing the rules results in individuals selecting opportunities for immediate riches. I support the concept of licensing any type of involvement, subject to the scrutiny of a professional, before it can be made.
	Social impact financing	There is significant retail investor interest to provide financing to local organizations and businesses, particularly those driving local social and environmental impact. Our platform focuses on accredited investors, given the current regulatory framework and the potential availability of capital from these sources. However, we have fielded significant interest from individual, retail investors, who may not necessarily meet the criteria for an accredited investor, in financing local impact. Many stakeholders, local and global, in the emerging impact investing marketplace have reported similar interest from such individual, retail investors. There are an increasing number of organizations and businesses building market-based models to tackle social and environmental problems and turning to investors for financing. We are acutely aware of the large number of such organizations and businesses in Ontario. However, the relatively high cost of capital and the lack of access to capital are significant barriers to their ability to grow and advance their mission. There is another area of urgent need for capital raising reform. Governments, NGO's and the community are recognizing "social capital" where investors are willing to accept limited financial rewards when combined with work to solve social and environmental challenges. These ventures also need capital. The CSA should develop a series of exemptions aimed at the formation of community capital initiatives – for profit, not for profit and for limited profit – over and above the current exemptions under review. Perhaps the next CSA request for comments will be a call for business owners and advisors to assist the CSA in fostering capital formation for small and medium size businesses and social capital groups. We believe that such an initiative would get a very significant positive response.
	Report on exempt market data	The CSA should review, analyze and report on the exempt market activity information it collects in the NI 45-106F1 report of trades (including Form 45-106F6 in BC), and update this information at least annually. The CSA should conduct a public consultation to review the content of NI 45-106F1 (including Form 45-106F6 in BC) to ensure meaningful regulatory and commercial information is being collected on a national and harmonized basis. The CSA should implement electronic filings of the NI 45-106F1 to simplify submission for market participants and provide easier access for analysis and review of the filings by the CSA. It is important to identify where losses are occurring and causes of such losses so as to focus regulation. The CSA should also identify where funds are being raised; who is accessing securities in the exempt market; what they are purchasing; which intermediaries are involved. The CSA should publish this data or do research to obtain the data. It is difficult to comment on the issues raised in the Note without relevant data.

No.	Topic	Comment
	Private issuer and family, friends and business associates exemptions	Raise the private issuer restriction of only 50 shareholders to something higher. The 'friends, family and business associates' exemptions should drop the "close" adjective and include friends, family and business associates or spouses of these individuals. We believe that a new category should be added under subsection 2.4(2), which would be an investor having received a written "Independent Legal Advice Opinion". A definition of Independent Legal Advice Opinion could be added to protect the public even more. As an example, the legal counsel would require a certain number of years of practice to render such an opinion. We believe that the current definition of "private issuer" should be amended to stipulate that the issuer should only issue securities to beneficial owners of securities (other than non-convertible debt securities), who fall under the categories at subsection 2.4(2), at the time of the new issuance. Such new definition would ensure that the "private issuer" status for an issuer is not lost where a transfer of securities is made pursuant to Regulation 45-102. Although it may not be advantageous from a taxation perspective, service providers to SME's are unable to receive securities in exchange for services or goods while permitting the issuer to remain a private issuer. Maybe the current section 2.14 could be used in section 2.4 as a template and be modified accordingly based on the premise that the issuer would not lose its private issuer status if it were to use such exemption.
	Resale	Other aspects of the exempt market should also be reviewed, such as the resale rules which require first purchases to hold on to their securities for a period of time once they have purchased under an exemption. The resale rules are extremely complex and difficult for the average investor, let alone the sophisticated investor, to understand.