



February 28<sup>th</sup> , 2012

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

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

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

Cc Western Exempt Market Association  
Fax: 403-668-8343  
e-mail: [comments@wemaonline.ca](mailto:comments@wemaonline.ca)

To whom it may concern:

Dear Sir / Madam,

**Re: CSA Staff Consultation Note 45-401 *Review of Minimum Amount and Accredited Investor Exemptions***

**About OmniArch:**

OmniArch is an Exempt Market Product Manufacturer offering its investments through registered Exempt Market Dealers in the provinces of Alberta, British Columbia, Saskatchewan, Manitoba, New Brunswick and Ontario. OmniArch has a history in the exempt market and a reputation for transparency, full compliance, customer relations, open communication style to all parties and strong knowledge of the industry from a product manufacturer perspective. OmniArch also fosters knowledge from an Exempt Market Dealer, Exempt Market Representative and investor level as OmniArch maintains business and communication with many dealers, law firms, and dealing representatives on a daily basis.

Our goal as a manufacturer, is to ensure that the regulatory framework of our industry maintain a proper balance between an efficient system for entrepreneurs to raise capital, and investor protection. We support an environment for smart, transparent business models to be able to provide returns to private investors whilst providing true diversification to an investor's portfolio. We also are supporters of a sufficient amount of regulation to ensure adequate investor protection and access to a broad range of investment options, however feel that the regulations should not entirely or unreasonably prohibit the activities of Exempt Market Issuers, Dealers and Representatives, who should be able to perform within a reasonable regulatory environment given the appropriate level of governance and disclosure as required under the applicable securities regulations.

**Consultation questions**

**1. What is the appropriate basis for the minimum amount exemption and the AI exemption?**

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 oppose 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 oppose 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 ("OM") based Exempt Market environment) supporting the business model would address adequate concerns surrounding the AI and MA exemptions.

**2. Does the involvement in the distribution of a registrant who has an obligation to recommend only suitable investments to the purchaser address any concerns?**

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.

### **3. Do you have comments on the issues described in background #3?**

We feel that the current \$150,000 minimum investment does in fact aid in filtering mostly sophisticated investors, however we also feel that product disclosure and advice from a representative may be best suited to coincide with a minimum threshold.

We do not believe that the minimum threshold should be raised to coincide with the hypothetical level based on inflation, as in the current and recent economic environment, inflation should not be used as the sole tool to gauge the average investors (calculation based) financial capability to invest into a deal thereby assuming sophistication. We feel that the level should remain at current levels however that additional factors be added such as advice and adequate issuer disclosure. We feel this minimum exemption should stand at current minimum investment threshold levels, with the aid of a dealing representative, unless the exemption is repealed and replaced with the OM exemption, that currently works well in other Jurisdictions, with the notable absence of participation from Ontario.

If the investment threshold were to be increased, it would harm the capital raising ability for small and medium sized businesses, who in turn would find it difficult to start legitimate, secure and profitable enterprises that in turn add benefit to the Provincial and National economy and create jobs and activity in a local environment. We view this as harming entrepreneurship, and in turn would not be a benefit.

### **4. Are there other issues you may have with the minimum amount exemption?**

No

### **5. Do you agree with maintaining the minimum amount exemption in its current form?**

Somewhat. We agree that the exemption is currently acceptable, with additional requirements. We however feel that moving to an OM exemption would be a strong benefit.

### **6. How much should the minimum investment threshold be increased? Would your answer to this question change depending on whether:**

We are not supporters of a sole increase.

#### **• the purchaser is an individual, instead of an institutional investor?**

Both should be eligible within the correct guidelines. Ie: OM Exemption that currently requires issuers to provide a large amount of disclosure and transparency to all readers.

#### **• the security is novel or complex?**

No

#### **• the issuer of the security is a reporting issuer?**

No

#### **• a registrant is involved in the distribution who has an obligation to recommend only suitable investments to the purchaser?**

Not entirely, there should be additional requirements in addition to solely relying on a representative. However the requirements should weigh into account that the investor is the one deciding to invest at his/her own risk once consulted with a registered representative.

**7. Should the \$150,000 threshold be periodically indexed to inflation?**

No

**8. If we changed the \$150,000 threshold what would the impact be on capital raising?**

This would have a detrimental effect on capital raise and in turn entrepreneurship within the community, province and country. This would be a negative for the overall economy.

**9. Should individuals be able to acquire securities under the minimum amount exemption? Would your answer to this question change depending on whether:**

Yes, however individuals should be given a guideline to invest, similar to the current OM exemptions.

**• any disclosure is provided to investors, including risk factor disclosure?**

The addition of disclosure effectively suggests for a different exemption entirely, that being the OM exemption.

**• the security is novel or complex?**

No

**• the issuer of the security is a reporting issuer?**

No

**• a registrant is involved in the distribution who has an obligation to recommend only suitable investments to the purchaser?**

Despite a registrant's involvement, there are more appropriate disclosure based exemptions including the OM exemption on which purchases should generally be allowed to be based upon.

**10. If individuals are able to acquire securities under the minimum amount exemption, should there be any limitations?**

No Limitations, as that would be unfair to individuals.

**11. If we limited the use of the exemption to persons who are not individuals, what would the impact be on capital raising?**

Limiting the use of exemption to persons who are not individuals would be detrimental to capital raising abilities for a various number of businesses and entrepreneurial organizations, in turn damaging the Canadian fuel for growth within a largely well-structured private capital marketplace. Many businesses that fuel local economies were started with individuals investing within them at early stages of their respective business cycles.

**12. Are there alternative qualification criteria for the minimum amount exemption?**

No

**13. Are there other limitations that should be imposed on the use of the minimum amount exemption?**

No

**14. Should the minimum amount exemption be repealed? Would your answer to this question change depending on whether:**

Only repealed if replaced with the OM Exemption.

**• any disclosure is provided to investors, including risk factor disclosure?**

The addition of disclosure effectively suggests for a different exemption to be relied upon, that being the OM exemption. However, in certain instances where a small amount of money is being raised, it is cost prohibitive to require an OM be prepared.

**• the purchaser is an individual, instead of an institutional investor?**

Both should be eligible within the correct guidelines. Ie: OM Exemption that currently requires issuers to provide a large amount of disclosure and transparency to readers.

**• the security is novel or complex?**

No

**• the issuer of the security is a reporting issuer?**

No

**• a registrant is involved in the distribution who has an obligation to recommend only suitable investments to the purchaser?**

Although a benefit, despite a registrant's involvement, there are more appropriate disclosure based exemptions including the OM exemption on which purchases should generally be based upon.

**15. If the minimum amount exemption was repealed:**

**• would that materially affect issuers' ability to raise capital?**

Yes, in a detrimental manner to the local and wide reaching economies.

**• is the AI exemption (in its current or modified form) an adequate alternative to the minimum amount exemption?**

Yes, in its current or modified form.

**16. Are there other options for modifying the minimum amount exemption that we should consider?**

N/A

**17. Do you have comments on the issues described above?**

We do not believe the minimum amount exemption threshold should be increased. Adding the requirement for a registered representative will be a benefit and will move towards addressing qualification criteria, unless the OM Exemption is adopted Nationally (in addition to Ontario), in which case this may solve the majority of the concerns.

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 CSA request for comment letter re: notice 45-401* as eliminating securitized debt offerings from the Exempt Market through an OM would severely hurt the industry and its investors, and we also do not 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 we strongly suggest should not be eliminated. We feel strongly 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.

**18. Are there any other issues you may have with the AI exemption?**

No further issues other than previously outlined within this comment letter.

**19. Do you agree with retaining the AI exemption and the definition of "accredited investor" in their current form?**

Yes, or in a modified form.

**20. What should the income and asset thresholds be? Would your answer to this question change depending on whether:**

The income and asset threshold should remain the same.

**• any disclosure is provided to investors, including risk factor disclosure?**

Disclosure should be a part of the requirement.

**• the security is novel or complex?**

No

**• the issuer of the security is a reporting issuer?**

No

**• a registrant is involved in the distribution who has an obligation to recommend only suitable investments to the purchaser?**

Despite a registrant's involvement or not, there are more appropriate disclosure based exemptions including the OM exemption on which purchases should generally be allowed to be based upon.

**21. Should the income and asset thresholds be periodically indexed to inflation?**

No

**22. If we changed the income and asset thresholds, what would the impact be on capital raising?**

This would have a detrimental effect on capital raise and in turn entrepreneurship within the community,

province and country. This would be a negative for the overall economy and in turn Canadian economic strength and progress.

**23. What qualification criteria should be used in the AI exemption for individual investors? Would your answer to this question change depending on whether:**

We feel the current rules and exemptions for AI are adequate. We feel adopting the OM exemption would be a benefit.

- **any disclosure is provided to investors, including risk factor disclosure?**

Disclosure should be a part of the requirements.

- **the security is novel or complex?**

No

- **the issuer of the security is a reporting issuer?**

No

- **a registrant is involved in the distribution who has an obligation to recommend only suitable investments to the purchaser?**

Although a benefit, despite a registrant's involvement, there are more appropriate disclosure based exemptions including the OM exemption on which purchases should generally be allowed to be based upon.

**24. If we changed the qualification criteria, what would the impact be on capital raising?**

This would have a detrimental effect on capital raise and in turn entrepreneurship within the community, province and country. This would be a negative for the overall economies.

**25. Should individuals be able to acquire securities under the AI exemption? Would your answer to this question change depending on whether:**

Yes, individuals should have the right to purchase just as institutions would.

- **any disclosure is provided to investors, including risk factor disclosure?**

Disclosure should be a requirement for all investment offerings despite to an individual or institution.

- **the security is novel or complex?**

No

- **the issuer of the security is a reporting issuer?**

No

- **a registrant is involved in the distribution who has an obligation to recommend only suitable investments to the purchaser?**

This would be a benefit; adopting the OM exemption would also accomplish this as more comprehensive disclosure is available to the investor.

**26. Should an investment limit be imposed on accredited investors who are individuals? If a limit is appropriate, what should the limit be?**

Individuals should be able to gauge their own limitations, no limits should be enforced.

**Would your answer to these questions change depending on whether:**

- **any disclosure is provided to investors, including risk factor disclosure?**

Disclosure should be a part of any exemption regardless of whether or not any limits are imposed.

- **the security is novel or complex?**

No

- **the issuer of the security is a reporting issuer?**

No

- **a registrant is involved in the distribution who has an obligation to recommend only suitable investments to the purchaser?**

This would be a benefit.

**27. If investment limitations for individuals were imposed, what would the impact be on capital raising?**

Capital raise would decline. We do not see this as a favourable decision.

**An issue with the AI exemption is ensuring compliance with the qualification criteria. One way to improve compliance with the AI exemption would be to require an investor's accredited investor status to be certified by an independent third party, such as a lawyer or qualified accountant.**

No, as this would not make sense for individual investors. Investors do not have to show proof of financial strength to purchase high risk equities, invest in private high risk ventures and or other investment tools offered in the investment marketplace. Why should they be subject to governance in a marketplace where some select investments are much safer than higher risk opportunities? Further to that, installing this level of governance will have a major impact on the accredited investor placing monies into investments, as there is additional time, cost and energy in this form of requirement. In our view this would be a detriment, not a solution. The subscriber should be liable for representation of an accredited investor status.

**28. Should this be considered in a review of the AI exemption?**

No.

**29. Do you agree with imposing such a requirement?**

No.



### **30. Are there alternatives that we should consider?**

Please see answer to question 31.

### **31. Are there other options we should consider for revising the AI exemption or for substituting an alternative exemption?**

If the AI exemption remains, we suggest that the current thresholds are either maintained or possibly reduced and that a defined instrument, similar to a term sheet or executive summary is introduced. One would assume that sophisticated investors would require less disclosure but we feel they should still be provided with an adequate amount. OMs provide adequate disclosure for average investors so perhaps a short form version of the same containing the most pertinent information such as risk factors, dilution/capital structure, and fees would be suitable in the case of the AI exemption.

We suggest that the Ontario Securities Commission and Securities Commission of Newfoundland and Labrador adopt the OM exemption as have the other jurisdictions within Canada. The OM Exemption is working well within a regulated environment through Exempt Market Dealers and Licensed Representatives within other Jurisdictions. We oppose proposal (NI 41-103 Notice) in regards to elimination of securitized debt from the exempt market via the offering memorandum exemption. We feel that securitized debt offerings should continue to be allowed to be distributed under the offering memorandum exemption.

*Thank You for taking the time to read this, we truly care about our industry and environment that we perform business within, we wish to see a methodical, information based approach to regulation. We are here to aid in casting a balance between efficient capital markets and appropriate investor protection.*

*Sincerely,*

*Jay Modi,  
OmniArch Capital Corporation*

