CFA Societies Canada

Canadian Advocacy Council

120 Adelaide Street West, Suite 2205
Toronto, ON M5H 1T1

+1 (416) 366 3658 tel
www.cfacanada.org

December 21, 2020

VIA EMAIL

Alberta Securities Commission
Suite 600, 250 – 5th Street SW
Calgary, AB T2P 0R4
New.Economy@asc.ca

Dear Sirs/Mesdames:

Re: CSA Multilateral Notice and Request for Comment 45-327 Proposed Prospectus Exemption for Self-Certified Investors (the "Proposed Exemption")

The Canadian Advocacy Council of CFA Societies Canada[1] (the "CAC") appreciates the opportunity to provide the following comments on the Proposed Exemption.

We understand the Proposed Exemption is intended to be available to issuers in Alberta and Saskatchewan who distribute securities to investors in those provinces as an alternative to the accredited investor exemption, or for those who do not yet qualify as such. We believe it is important for this intention to be made clear in the wording of the Blanket Order, such that issuers and any registrants who are located in Alberta or Saskatchewan and involved in an offering do not mistakenly believe they can sell securities under this Proposed Exemption to investors in other jurisdictions. While the proposed form of statutory declaration includes a statement that the investor is a resident of either Alberta or Saskatchewan, a similar statement could be included as a specific requirement of the proposed Blanket Order as well.

The notice explaining the Proposed Exemption states that it is not intended that the issuer take steps to independently confirm the education or experience qualification of persons attesting to the foregoing in a statutory declaration. While that is a departure from the usual burden placed on issuers to ensure that an exemption from the

[1] The CAC is an advocacy council for CFA Societies Canada, representing the 12 CFA Institute Member Societies across Canada and over 18,000 Canadian CFA charterholders. The council includes investment professionals across Canada who review regulatory, legislative, and standard setting developments affecting investors, investment professionals, and the capital markets in Canada. Visit www.cfacanada.org to access the advocacy work of the CAC.
CFA Institute is the global association of investment professionals that sets the standard for professional excellence and credentials. The organization is a champion of ethical behavior in investment markets and a respected source of knowledge in the global financial community. Our aim is to create an environment where investors' interests come first, markets function at their best, and economies grow. There are more than 177,600 CFA charterholders worldwide in 165 markets. CFA Institute has nine offices worldwide and there are 160 local member societies. For more information, visit www.cfainstitute.org.

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prospectus requirement is available, we agree that a statutory declaration could suffice for the time being. However, to the extent that a registrant is involved in the distribution, we believe it is important that it be clearly stated that the statutory declaration does not abrogate the registrant's KYC, KYP or suitability obligations. Presumably, part of the dealer's responsibility would be to ensure that the individual qualifies for the exemption under the stated criteria as part of his or her suitability obligations. It is important that the self-certification not become a "check-the-box" exercise on the part of proposed investors, and dealers should bear some responsibility for ensuring the accuracy of the self-certification. If there are ramifications to inaccurate statements, those ramifications should extend to the registrants facilitating the issue.

While the investor may have the credentials to make them aware of the general risk characteristics of an investment, that same investor may not have a proven ability to withstand the loss of part or all of their investment in the issuer. Therefore, it will be crucial for registrants to confirm as part of the KYC and suitability assessments that any investor utilizing the Proposed Exemption is not investing using borrowed funds beyond their ability to repay should the investment prove either worthless or illiquid. Registrants should also ensure that all relevant concentration limits are not exceeded.

We appreciate that many of the risks described in the Self-Certified Investment Statement and Acknowledgement (the "Certificate") are detailed and written plainly and concisely. We support the required acknowledgement after the explanation of each risk. While the Certificate requires an investor to state that they do not *intend* (emphasis added) to invest more than $10,000 in the issuer in the last 12 months or more than $30,000 in all issuers, we think it is equally important they certify that at the time of investment they have not breached, and will not as a result of the investment breach, these thresholds.

While we applaud the initiative shown by the ASC and FCAA in advancing this initiative, we strongly support harmonizing prospectus exemptions across Canada for ease of use by investors and issuers and to reduce the possibility of regulatory arbitrage across jurisdictions. Once the Proposed Exemption is in place for a suitable length of time and data is gathered on both its use and compliance with its terms, and it is clear that investors have not been disadvantaged, we would encourage the ASC and the FCAA to work with their counterparts in other jurisdictions to expand the Proposed Exemption across Canada. It might then be possible in a future policy project to expand the Proposed Exemption in the initial two jurisdictions even further by considering other professional designations and professional experience of persons who can understand the relevant financial and investing considerations of a particular investment, as noted further in our response below to the specific questions posed.

It will be important for the ASC and FCAA to monitor the use of the Proposed Exemption closely, such that any issues can be corrected and avoided during the initial pilot project in a timely manner. We believe proactive audit sweeps around the use of

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the Proposed Exemption, as well as registrant and issuer education on the conditions for its use, will help prevent many potential problems from occurring.

Our feedback in respect of select questions posed follow.

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

We anticipate that the Proposed Exemption would be used by start-ups and emerging businesses in Alberta and Saskatchewan to sell securities to professional colleagues, friends and acquaintances of promoters and officers/directors of the issuer who are unable to purchase securities under an existing prospectus exemption. We believe many of these investors might be just shy of the requisite income or financial asset threshold to qualify as accredited investors. We would encourage the ASC and FCAA to engage in proactive outreach efforts to the angel investor, venture capital, and start-up business ecosystems (that vary by industry sector) to build awareness of this exemption and the positive impact that it may have on the capital-raising ambitions for new and emerging businesses in these provinces.

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

As the aggregate issuer limits are equivalent to what is permitted for eligible investors to purchase securities using the offering memorandum prospectus exemption in Alberta and Saskatchewan, we believe the limits are reasonable.

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

Item 8 of the Certificate references the fact that for non-reporting issuers, the prospective investor could be forced to hold the securities for many years, potentially indefinitely. We think it is important that this statement be highlighted even more by separating out the reference, bolding it and using plain language (i.e. This investment may remain illiquid for a very long time, potentially more than 10 years, and in some cases, even indefinitely). It can also be stated that illiquidity is a heightened risk for the types of issuers likely to utilize the Proposed Exemption.

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In addition, we believe that a few additional disclosure items should be added to the Certificate. In particular, the Certificate does not mention the risk of not obtaining (and understanding) tax disclosure regarding the potential tax impact of the investment. For example, early stage and start up issuers might well be structured as limited partnerships, such that allocations may be made to limited partners without any cash distributions with which to pay the tax, or there could be other circumstances of phantom gains. The lack of tax disclosure could be highlighted as a specific item of information that would be provided in a prospectus under Item 2 – Information needed to make investment decision, and/or Item 5 - No registered dealer or qualified advice, or under its own category. The specific risk that the tax consequences of the investment could be materially adverse to the purchaser should be stated explicitly as a risk.

As noted above, we remain concerned that investors should not be permitted to invest using the Proposed Exemption with excessive borrowed funds, and that should be explicitly confirmed in the statutory declaration.

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

As noted in our response above, we believe regulators should monitor the use of the Proposed Exemption before it is expanded either geographically to other Canadian jurisdictions, or to other investors. However, we would be pleased in the future to consider whether there are other educational avenues or areas of study, such as economics, applied mathematics, business strategy or entrepreneurship, coupled with professional experience related to public or private financings or mergers and acquisition transactions, which could be seen as equivalent in specific circumstances.

7. One of the goals of the proposed self-certified investor exemption would be to help facilitate the development of the angel investor entrepreneurial community. Although angel investors may invest directly into early-stage businesses, we understand that angel investors will often invest on a syndicated basis, forming a special purpose vehicle, such as a limited partnership or corporation, in which they will invest and then that special purpose vehicle will invest in an early-stage business. The proposed self-certified investor exemption could facilitate direct investment into a business or a special purpose vehicle. However, the distribution of securities of an early stage business to a special purpose vehicle also requires reliance on a prospectus exemption. We understand that these financings are often conducted under the private issuer exemption, which allows the distribution of securities to a number of specified parties, including accredited investors. We understand that the special purpose vehicle is often treated as an accredited investor because all the owners of interests (except voting securities required to be owned by directors) are accredited investors. This option would

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seem not to be available for a special purpose vehicle where one or more of the owners of interests were self-certified investors.

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

We have some concerns with respect to interpreting the "not the public" prong of the private issuer exemption such that it would automatically include a vehicle that is predominately owned by accredited investors. While allowing this type of investment syndication could assist issuers in raising capital from these groups, it would lead to disharmonizing the use of the private issuer exemption in other jurisdictions, or even in Alberta and Saskatchewan in other circumstances that do not involve the Proposed Exemption. Issuers utilizing the private issuer exemption directly may be required to take a narrower view of the meaning of "not the public", providing an unfair advantage to issuers utilizing the Proposed Exemption in the manner set out above. In addition, encouraging syndications for the purpose of investing in this manner may, depending on the circumstances, also raise additional questions such as whether the special purpose vehicle could be considered an investment fund under applicable securities legislation.

Concluding Remarks

We thank you for the opportunity to provide these comments. We would be happy to address any questions you may have and appreciate the time you are taking to consider our points of view. Please feel free to contact us at cac@cfacanada.org on this or any other issue in future.

(Signed) *The Canadian Advocacy Council of CFA Societies Canada*

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