

Dear Madams:

I am writing to comment on the proposed amendments to NI 45-106, in particular the proposed annual investment limits for non-accredited investors.

### **Suitability**

**The proposed caps that are intended to limit risk, and effectively add another layer of suitability, are inappropriate measures if the intent is to enhance investor protection. I do not believe that proposing a cap is appropriate, as it can limit the ability to structure a suitable portfolio for the client. The liability for the suitability resides with the dealer and dealing representative. If an artificial cap would be a solution – and I do not believe it is - it would be better to define it by a percentage of the total assets. Individuals with a net worth of \$0.3K, \$2M or \$4.5M are clearly not equal if they are limited to investing a maximum of \$30,000 per year. Arbitrary rules such as these will not enable proper portfolio construction.**

**The more appropriate method for addressing the risk is to spread the investments over multiple issuers and/or issuing entities in case some issuer has multiple issues.**

### **Marketing Materials**

**Making marketing materials a part of the offering documentation is a good idea. It is illogical that they are not.**

### **Ongoing Disclosure**

**While the idea is good, the cost of audits can be prohibitive. Investor's right to receive the information and right to pay for an audit might be a better way to address this. This is private equity after all, why not adopt the industry practices.**

### **Separating Connected Issuers from Dealers**

**Frankly this makes no sense. These dealers and their dealing representatives are subject to same suitability requirements regardless where the product originated.**

### **Complex Securities and Structured Products**

These products exist for a reason, and they are intended to accommodate the risk and return needs of the investors. These vehicles can and are used to finance smaller businesses or multiple smaller businesses using one structure, and they have built in risk mitigants that are there for the benefit of the investor, not to their detriment. The statement about structured products make very little sense in light of intentions stated earlier about trying to reduce the risk for the investors.

About the complexity issues; The dealing representatives must know the product (KYP) and client (KYC) to determine suitability. They should not be selling products they don't know, this applies to all products. If there are concerns here, you already have the rules in place to address them. I would suggest enforcing KYP and suitability instead of proposing arbitrary rules that can harm the market as a whole.

**Questions about proposed amendments: Request for Comment Proposed Amendments to NI45-106:**

- 1) Not necessarily. The owner or intended beneficiary of the company should be the determinant.
- 2) Providing there is a suitable investment vehicle available, an investor saving for a home should be able to make a larger investment in an investment vehicle that will allow them to hedge the price of their future home at the neighborhood where they are planning to purchase a home.
- 3) Unlikely
- 4) They should seek and receive advice in every interaction. This should not present any complications, as long as everyone is acting in proper, professional and ethical manner. No different from any other finance related interaction with any finance professional.
- 5) a. Yes. The investment vehicle may have been created for a specific purpose of participating in the investment. However, this should be evaluated in portfolio context.  
b. It depends. The mortgage should be deducted from the principal residence value. This question should be evaluated in portfolio context.  
c. Yes. The portfolio risk is calculated based on the total portfolio that an individual has. The risk is the total risk of all underlying assets. Segregating assets to risky portfolio and non-risky portfolio is extensively discussed in the context of behavioral finance and it is an erroneous approach to portfolio theory, hence portfolio construction.
- 6) Absolutely no. Lawyers are not financial planners. Some accountants could be, but again most of them are not. Education or a background in finance should determine who should or should not be an eligibility adviser. How well do the lawyers and accountants understand portfolio theory? What proof can they provide of their understanding of finance and investment selection?
- 7) a. Not uncommon. Via email, website (investor sign in) or mail.  
b. Yes for continuous distribution.  
c. See above. Unmodified opinion.

**d. Yes, they continue with IFRS.**

**e. No.**

**f. \$15K - \$40K (Typically somewhere between \$20K - \$30K)**

**g. Absolutely!**

**h. I am not an issuer. I'd guess if the audit has been completed \$1,500 to \$5,000.**

**8) No.**

**9) Depends. Website, email & letters depending on the issuer.**

**10) No, they should provide internal financial statements. There is no reasonable time to assume when the proceeds have been spent. That is what the financials are for.**

**11) No. Companies and trusts should be expected to be professionals. If they want the protection available to individuals, then they should invest as an individual. True investment vehicles should be in the business of investing.**

**12) No. Permitted Clients are expected to be professionals. If they want the protection available to individuals, then they should invest as an individual and opt to invest as a not permitted client. These investors should be treated as professionals. More over, they can find "hand holding" annoying as it would not be unusual that they may know the underlying investment as well or better than other parties involved in the process.**

**13) Yes. Some of the funds may not be able to set up redemption date based on the business they are in. However, it is critical that they communicate with their investors.**

**14) Yes.**

**15) Yes. There is a suitability requirement that should remove any conflicts arising from this.**

This submission is being made on my own behalf.

If you would like further elaboration on my comments, please feel free to contact me.

Regards,

Miika Makela, CFA