BY ELECTRONIC MAIL: jstevenson@osc.gov.on.ca**,**

February 22, 2013

John Stevenson
Secretary
Ontario Securities Commission
20 Queen Street West, Suite 1900, Box 55
Toronto, ON M5H 3S8

Dear Sirs / Mesdames:

Re: OSC Staff Consultation Paper 45-710: Considerations for New Capital Raising Prospectus Exemptions

We are writing to provide you with comments on behalf of the Members of The Investment Funds Institute of Canada ("IFIC") with respect to the Ontario Securities Commission ("OSC") Staff *Consultation Paper 45-710 – Considerations for New Capital Raising Prospectus Exemptions* (the "Consultation Paper"), published on December 14, 2012.

We appreciate the opportunity to participate in the OSC's preliminary consultation to help formulate your views on this important area. For discussion purposes we are primarily offering conceptual and higher-level thoughts on the exempt market, with some feedback on the concept proposals which are raised in the Consultation Paper. We expect to have more detailed comments in response to any regulatory proposals which may result from this consultation.

Although the majority of our Members' business operations are in the retail investment fund area, complying with the full prospectus product disclosure and distributor registration, compliance and oversight system, some Members do participate in distributions which rely on the minimum amount and accredited investor prospectus exemptions. We would like to emphasize that retail investment funds are a significant source of capital in Canada; the fund assets which are pooled through unitholder purchases are themselves invested in the capital markets in Canada as well as in other jurisdictions.

General Remarks on the Exempt Market and Prospectus Exemptions

To repeat some of the general remarks first made in our February 29, 2012 comment letter in response to the CSA review of the minimum amount and accredited investor exemptions, IFIC Members support appropriate and relevant disclosure with respect to investment funds and securities products that compete with funds in the retail market. Such information empowers investors to make informed choices about the various securities that may be recommended to them for purchase.

Our Members strongly believe in the value of advice; empirical research shows that Canadian investors who use advisors reap durable economic benefits and are substantially better off than those who choose to invest without advice. As such, for the vast majority of individual investors we believe that advice together with clear disclosure is the preferred model for investment.

At the same time, we recognize that there are many types of investors, and that distribution of securities through the full prospectus distribution route does come at significant cost.

The segment of investors who are independently qualified or otherwise self-sufficient to conduct or obtain the appropriate due diligence they require to invest and to manage their investments can be well-served by the exempt market. Whether their self-sufficiency is measured by their business experience, education, size of assets or another criteria that qualifies them as exempt market investors, the markets should respect these investors' preference to invest in reliance on prospectus exemptions. The key factor is that they are duly qualified to invest in exempt market products.

One fundamental issue that needs to be considered, and which is highlighted by the concepts in the Consultation Paper, is the definition in Canada of "retail investor". Many of the prospectus exemptions assume a certain level of financial wherewithal or investment expertise and are generally considered to be appropriate only for qualified, "non-retail" investors. In Consultation Paper 33-403, *The Standard of Conduct for Advisers and Dealers*, the CSA is discussing the application of a statutory best interest standard to all providers of advice to an expanded definition of retail investor which includes individuals with net financial assets of $5 million or less and companies having net assets of $25 million or less; a significant expansion over what would commonly be considered to be a retail client. We believe the concept discussed in CP 33-403, and the fact it does not propose to extend a statutory best interest duty to exempt market dealers, necessitates a significant reconsideration of the types of investors who should be qualified to participate in the exempt market, not only for investor protection but also to minimize the opportunity for product arbitrage. We also understand that the prospectus exemptions in other jurisdictions rely on a more traditional definition of retail investor than that noted in CP 33-403, and thus the models in these jurisdictions may not be entirely appropriate comparators for the Canadian market. As such, we recommend more consultation and consideration of the interaction of the concepts in CP 33-403 with the concepts in Consultation Paper 45-710 to better understand the regulatory environment that would be created if these concepts should move forward.

It is also worth emphasizing that the Consultation Paper notes that in 2011 approximately $86.5 billion was raised through the exempt market in Ontario, of which investment funds (purchases, not redemptions) accounted for approximately 68% of the total. By comparison, the mutual fund industry experienced gross sales (before redemptions) in Ontario of $78.2 billion in 2011 and $82 billion in 2012. The exempt market is therefore not an insignificant market. To better understand the size of this market, it would be informative to learn the cumulative total amount of assets invested in Canadian exempt market securities (the equivalent of assets under management) as at a particular date, as we would not expect the average duration of investments in such securities to be shorter than one or two years.

The divergence of capital raising needs and ready availability of willing investors, suggests to us the need to preserve choice in the markets. As such, our Members continue to believe in the value of prospectus exemptions, and further that the CSA work to expand the availability across Canada of the exemptions that are currently in place only in individual jurisdictions.

However, our Members continue to be concerned about the ability for competing products to be offered to retail investors (however this term may ultimately be defined) through various channels that provide different degrees of investor disclosure and market participant regulation, leading to product arbitrage and potential lessening of investor protection. Unless they happen to qualify to participate in the exempt market, retail investors should not be offered complex products without the participant regulation and investor information requirements that exist in the traditional prospectus-qualified distribution channel. The Consultation Paper notes concerns with market practices of some exempt market dealers. As we noted during the consultations regarding NI 31-103, we continue to believe the level of oversight necessary for exempt market dealers should be commensurate with the inherent risk of the particular product distributed.

Comments on Some Specific Concepts Discussed in Consultation Paper

1. Crowdfunding

We appreciate the OSC's efforts to summarize the various structures that have evolved and that are under consideration in other jurisdictions to permit capital raising through crowdfunding and agree that a clear regulatory framework is necessary before this is permitted to be an exempt capital raising avenue. Since crowdfunding is designed to permit retail investors to participate in ventures by making relatively small investments, we believe a strong framework that mandates the provision of information about the investment for investors at and subsequent to purchase, and that regulates and supervises the portal intermediary is essential for investor protection.

Since the foundation of the crowdfunding model is the existence of a portal to connect issuers to investors, we believe that a certain degree of regulatory oversight of and compliance responsibility over these portals is essential. The OSC's concept, for example, relies on the verification of certain corporate information and due diligence about the issuers, confirmation that investors meet the investment limits, that issuers comply at all times with the terms of their investment offering, and that prescribed information be provided to investors. As the intermediary, and likely the only participant in this structure to be regulated and subject to securities commission or SRO oversight, the portal may be the most appropriate entity to perform all due diligence on the issuers and investors, and to distribute all information distribution and ensure compliance with all other requirements. More discussion and consultation is recommended tin order to develop the appropriate regulatory model.

Furthermore, the caps on maximum annual and total investment amounts that a retail investor can invest in the crowdfunding market, as proposed in the concept, should not be the only or primary investor protection consideration. In the retail mutual fund industry for example, the small initial investments that retail investors are able to make in mutual funds (as low as $500, with subsequent purchases of as little as $50), does not in any way reduce the thorough regulatory requirements applicable to mutual funds, including prospectus qualification and distribution only through licensed and regulated distributors.

2. Exemption Based on Registrant Advice

Although we absolutely support the value of advice to investors, this capital raising concept causes concerns. We acknowledge there is currently a managed account exemption that deems a portfolio manager of a fully managed account to be an accredited investor that is able to acquire securities on a prospectus-exempt basis on behalf of the accounts of retail clients that it manages. The necessity for an arrangement to permit the portfolio manager to manage these assets using its discretion is clear.

The idea of extending this exemption beyond fully managed accounts is premised on a number of conditions including that the investment dealer has contractually agreed that it has a fiduciary duty to act in the best interests of the investor. As we noted above, CP 33-403 explores the concept of introducing a statutory best interest duty to all advisers of retail clients. Should the CSA proceed with this concept, the imposition of a best interest duty to all advisers would essentially make available the "provision of advice" exemption to all advisers for all clients, if they meet the remaining three criteria.

Again we believe that there are a number of concerns raised by the interaction of the concepts considered in the Consultation Paper and CP 33-403, and believe more consultation and consideration of this interaction are essential to better understand the environment that would be created.

Thank you for providing us with an opportunity to comment on this important issue. We look forward to our continued participation in any further public consultation on this topic and would be pleased to discuss our input in greater detail with you. Should you have any questions or wish to discuss these comments, please contact me by telephone at 416-309-2314 or by email at rhensel@ific.ca.

Yours truly,
THE INVESTMENT FUNDS INSTITUTE OF CANADA

By: Ralf Hensel
General Counsel, Corporate Secretary and
Director of Policy (Fund Manager Issues)