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Ontario Securities Commission
c/o
John Stevenson, Secretary
Ontario Securities Commission
20 Queen Street West
Suite 1900, Box 55
Toronto, Ontario M5H 3S8
jstevenson@osc.gov.on.ca

Dear Sirs / Mesdames,

Re: OSC Staff Consultation Paper 45-710 *Considerations for New Capital Raising Prospectus Exemptions* (the "**Consultation Paper**")

We submit the following comments in response to the Notice and Request for Comments published by the Canadian Securities Administrators (the "**CSA**") on December 14, 2012 with respect to the Consultation Paper. Thank you for the opportunity to comment on the Consultation Paper.

This letter represents the general comments of certain individual members of our securities practice group (and not those of the firm generally or any client of the firm) and are submitted without prejudice to any position taken or that may be taken by our firm on its own behalf or on behalf of any client.

By way of general comments, we urge the Ontario Securities Commission (the "**OSC**") to continue to work with its counterpart members of the Canadian Securities Administrators (the "**CSA**") to ensure that a harmonized and national approach continues to be taken with respect to prospectus exemptions. The implementation of harmonized rules under National Instrument NI 45-106 *Prospectus and Registration Exemptions* ("**NI 45-106**") represented a vast improvement over the historically disparate approach, and resulted in greater certainty and ease of application of the rules. This ultimately has facilitated corporate finance activities both domestically and internationally. As various members of the CSA look to enhance the existing rules, we strongly encourage all regulators to continue to strive for harmonization at a national level and preserve what has been accomplished under NI 45-106.

Our specific comments are focussed on Section 7 of the Consultation Paper under "Need for Additional Exempt Market Data." By way of general comments, while we understand why the regulators may want more detailed information, the perceived benefit of the additional information should be carefully balanced with the

additional burden it represents. This includes issues with interpreting and applying exempt trade form requirements, as well as privacy and confidentially concerns associated with the provision of confidential and sensitive, and in some cases personal, information.

By way of specific comments, in our view, reporting issuers should not be required to provide additional information that is available in documents publicly filed pursuant to their securities law disclosure obligations. This would include, for example, information about the issuer's parent, its number of years in operation and its issuer's officers and directors. With respect to investment funds, this would include key service providers, fund strategy, redemptions, financial information and performance information. This type of information would be readily available in one or more of the issuer's prospectus, annual information form, management discussion and analysis, financial statements and/or management report of fund performance. Requiring such information to be repeated in the exempt trade report creates an unnecessary burden and may raise issues with respect to consistency with public disclosure, including among other reasons, based on the timing of the report as compared to the most recently filed public disclosure material (for example, as to whether the information in the report would be required to be brought forward to the date of report, or presented as of the date of the latest filing). We see little utility in requiring an issuer to repeat information that is already publically accessible. Similar considerations should also be extended to foreign issuers where the issuer or its parent is subject to disclosure obligations under their local laws or stock exchange rules, which rules may or may not be comparable to Canadian disclosure.

With respect to non-reporting issuers, we think the additional information requested would raise substantial issues with respect to privacy and confidentiality concerns. Private issuers are not subject to public disclosure obligations under securities laws generally, and we are concerned that the enhanced disclosure would indirectly subject them to providing disclosure they otherwise have no obligation to publicly disclose. Also, many private issuers, especially investment funds, consider information about fund strategies, redemptions, assets under management and performance information to be highly sensitive and confidential.

Currently, with respect to Form 45-106F1, the issuer is required to confirm that it has notified and obtained authorization from each purchaser of the information to be provided in the form, consistent with provincial privacy laws. To the extent that the range of individuals in respect of whom information is required will be expanded, similar privacy law considerations will apply, including the ability of issuers to obtain similar authorizations in an efficient and timely manner. This is exacerbated by the fact that the Consultation Paper does not comment on the extent to which information provided on the report will be publicly accessible. Currently, Schedule 1 of Form 45-106F1 states that while information contained in Schedule 1 will not be placed on the public file, it may be required to be made available pursuant to freedom of information legislation in certain jurisdictions (See also s. 6.1(3) of the Companion policy to OSC Rule 45-501, wherein the OSC states that it has determined that for the purposes of s. 140 of the *Securities Act*, the desirability of

avoiding disclosure of the information referred to therein outweighs the desirability of adhering to the principle that information filed with the OSC be available to the public for inspection). If additional information is required, particularly personal information such as an investor's category of accredited investor, age and work status, the OSC should clarify the circumstances under which such information would be made available under a freedom of information request.

To the extent that additional information is required, the information sought to be collected should be clearly defined and explained. In this respect, we note that the instructions or descriptions may not be readily applicable to all issuers. For example, "performance information" may not apply consistently across all types of investment funds.

With respect to registrants, we reiterate the same comments about having to provide information that is otherwise publicly available and accessible. Further, with respect to disclosure about being related or connected to the issuer, we note that disclosure and compliance is required under National Instrument 33-105 *Underwriting Conflicts* and in that respect, it is required where it is most pertinent, i.e., in relation to the investor. We question the utility of duplicating the disclosure requirement in the report of trade.

With respect to offering memoranda, we note that under s. 5.4 of OSC Rule 45-501 and under equivalent rules in other jurisdictions, an offering memorandum is required to be delivered to the regulator under similar time-frames as the filing of the report of trade. Therefore, we question the utility of confirming whether an offering memorandum was provided.

We also do not believe that more frequent reporting should be required by investment funds. In our view, the current rules which permit investment funds to report on an aggregate basis within 30 days of the year-end strike an appropriate balance and, we would assume, provide information to the regulators in a manner that they can readily aggregate and analyze.

Finally, we note that requiring additional post-trade information has the very real potential of having a chilling effect on capital raising activities. We note, for example, the introduction by the British Columbia Securities Commission of expanded disclosure in its own exempt trade report on Form 45-105F6. Very soon after introducing that form, the BCSC retracted many of the expanded reporting requirements, conceivably in response to comments and issues raised by market participants as to the unintended consequences that form would have on capital raising activities in British Columbia.

Thank you for the opportunity to comment on these proposals.

Regards,

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Ramandeep K. Grewal
Alix d'Anglejan-Chatillon