ASSOCIATION DES BANQUIERS CANADIENS
CANADIAN BANKERS ASSOCIATION

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

Attention:

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Dear Sirs/Madams:

Re: Proposed amendments to prospectus rules

The Canadian Bankers Association ("**CBA**") works on behalf of 52 domestic banks, foreign bank subsidiaries and foreign bank branches operating in Canada and their 267,000 employees. The CBA advocates for effective public policies that contribute to a sound, successful banking system that benefits Canadians and Canada's economy. The CBA also promotes financial literacy to help Canadians make informed financial decisions and works with banks and law enforcement to help protect customers against financial crime and promote fraud awareness.

We appreciate the opportunity to participate in stakeholder consultations regarding the proposal by the Canadian Securities Administrators ("**CSA**") to amend National Instrument 41-101 *General Prospectus Requirements* ("**NI 41-101**"), National Instrument 44-101 *Short Form Prospectus Distributions*, National Instrument 44-102 *Shelf Distributions*, National Instrument 81-101 *Mutual Fund Prospectus Disclosure*, the related companion policies and consequential amendments (together, the "**Proposed Amendments**"). We highlight below for your consideration several select areas of particular concern to the banking industry.

Personal information form requirements

Subject to limited exceptions, the Proposed Amendments would require a reporting issuer to have filed a personal information form (a "**PIF**") for each of its directors, executive officers and promoters prior to any prospectus filing, including long form, short form, shelf and mutual fund prospectus filings. The Proposed Amendments provide an exemption from this new requirement that would be available if: (i) the individual in question has executed a PIF within the previous three years, (ii) the PIF was provided to the regulator (either by that particular issuer if filing is between March 16, 2008 and the effective date of the Proposed Amendments, or any issuer if filing is after the effective date of the Proposed Amendments), and (iii) the issuer provides a certificate confirming that, at the time of the prospectus filing, the responses to specified questions in the previously filed PIF for the relevant director, executive officer or promoter have not changed. This would require an issuer to obtain confirmation of the accuracy of the responses to specified questions in the previously filed PIFs, or any changes thereto, from each of its directors, executive officers and promoters at the time of each prospectus filing.

Under the current rules, an issuer is not required to submit a new PIF for an individual at the time of each prospectus filing if a PIF for the individual has previously been filed, nor is an issuer required to confirm that the information contained in the previously filed PIF of an individual is still correct. We understand that the regulators are concerned about their ability to determine the suitability of directors, executive officers and promoters of a prospectus filing issuer. However, while limiting the currency of a PIF may be reasonable, we believe that the three-year time period and the requirement for issuers to confirm the accuracy of the responses to specified questions in a previously filed PIF for each of its directors, executive officers and promoters for each prospectus filing is onerous.[1] This is especially true for issuers, including our members, who file multiple prospectuses each year. We are concerned that this requirement may hinder the ability of an issuer to proceed with a transaction in a short timeframe, contrary to the principles of short-form prospectus offerings.

In light of the foregoing, we believe that the requirement to file a PIF every five years (which we understand is the current practice of many mutual fund reporting issuers), in combination with the current requirement to provide prospectus disclosure of legal proceedings, cease trade orders, bankruptcies, etc. in respect of directors and executive officers of the prospectus filing issuer, would address the CSA's concern without unnecessarily burdening the industry.

Non-issuer's submission to the jurisdiction and appointment of agent for service

The CSA proposes to expand the existing requirement to file a non-issuer's submission to the jurisdiction and appointment of an agent for service to all foreign directors of the issuers. Under the current requirement in subparagraph 9.2(a)(vii) of NI 41-101, only a person or company residing outside Canada that is required to sign or provide a certificate included in a prospectus must submit to Canada's jurisdiction and appoint an agent in Canada. We understand that the rationale behind the CSA's proposal is that all directors are liable under Canada's statutory regime for misrepresentations contained in the prospectus. We ask the CSA to carefully weigh

[1] In fact, delivery of PIFs under the current regime is already onerous. Our members receive constant feedback from directors and officers to this effect.

the benefits of the intended effect of this Proposed Amendment against any unintended consequences, such as hindering the willingness of foreign issuers to distribute securities in Canada and dissuading foreign directors from acting on the boards of Canadian companies. We are not aware that the absence of a requirement to submit to Canada's jurisdiction has raised any problems for securities regulators. In the absence of any such problems, we believe that the change is unnecessary.

Principal distributor certificate for investment funds

The CSA proposes to amend the principal distributor certificate required by Form 81-101F2 *Contents of Annual Information Form* ("**Form 81-101F2**") to require a principal distributor of a mutual fund to provide the same certificate as the mutual fund and the manager of the mutual fund. Among other things, the CSA proposes to remove "to the best of our knowledge, information and belief" qualification from the principal distributor certificate. As such, principal distributors of mutual funds would be required to certify that the annual information form, together with the simplified prospectus and the documents incorporated by reference therein, constitute full, true and plain disclosure of all material facts relating to the securities offered by the simplified prospectus and do not contain misrepresentations, without the benefit of the best of knowledge, information and belief qualification. Similarly, in a Proposed Amendment to Form 41-101F2 *Information Required in an Investment Fund Prospec*tus ("**Form 41-101F2**" and, together with Form 81-101F2, the "**Forms**"), the CSA proposes to require a certificate of the principal distributor of the investment fund, if there is one, to be in the same form as the certificate of the investment fund and the manager of the investment fund.

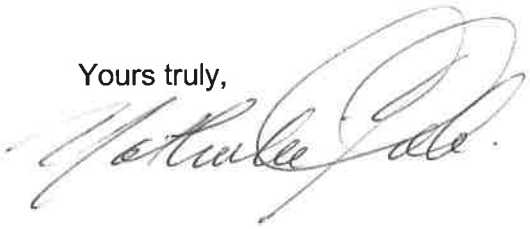
We are concerned about these Proposed Amendments for several reasons. The role of a principal distributor of an investment fund (including a mutual fund) is much more limited that that of the investment fund and the manager of the investment fund. While a principal distributor of an investment fund should have the ability to conduct a due diligence review of the investment fund for which it acts as the principal distributor, it is not directly involved in the creation of the investment fund or in its ongoing operations. The investment fund and the manager of the investment fund are involved in such matters and, as such, they are in a much better position to certify the disclosure. As a result, we do not believe that a principal distributor of an investment fund should be held to the same standard as the investment fund and the manager of the investment fund when certifying disclosure pursuant to the Forms.

We are also concerned about the impact of these Proposed Amendments on a principal distributor's liability for disclosure, as the requirement to certify disclosure to the best of knowledge, information and belief is consistent with the due diligence defence which is available under the securities legislation.[2]

In light of the foregoing, we believe that the "to the best of our knowledge, information and belief" language should not be removed from the principal distributor certificate required by Form 81-101F2, and that the same qualification should apply to the principal distributor certificate required by Form 41-101F2. We ask the CSA to reconsider these Proposed Amendments.

We appreciate the opportunity to comment on the Proposed Amendments. We would be pleased to discuss our comments with your in further detail.

Yours truly,



[2] For instance, in Ontario, such defence is available pursuant to section 130(5) of the *Securities Act* (Ontario).