ALBERTA INVESTMENT MANAGEMENT CORPORATION
CAISSE DE DÉPÔT ET PLACEMENT DU QUÉBEC
ONTARIO TEACHERS' PENSION PLAN BOARD

February 26, 2014

VIA E-MAIL

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

Ashlyn D'Aoust
Legal Counsel, Corporate Finance
Alberta Securities Commission
Suite 600, 250 – 5th Street SW
Calgary, Alberta T2P 0R4

Me Anne-Marie Beaudoin
Corporate Secretary
Autorité des marchés financiers
800, square Victoria, 22e étage
C.P. 246, tour de la Bourse
Montréal, Québec H4Z 1G3

The Secretary
Ontario Securities Commission
20 Queen Street West
22nd Floor
Toronto, Ontario M5H 3S8

Dear Sirs/Mesdames:

Re: Proposed Multilateral Instrument 45-107 *Listing Representation and Statutory Rights of Action Disclosure Exemptions* and Proposed Amendments to National Instrument 33-105 *Underwriting Conflicts*

Thank you for the opportunity to comment on proposed Multilateral Instrument 45-107 *Listing Representation and Statutory Rights of Action Disclosure Exemptions* ("MI 45-107") and on the proposed amendments to National Instrument 33-105 *Underwriting Conflicts* ("NI 33-105"). The Alberta Investment Management Corporation ("AIMCo"), Caisse de dépôt et placement du Québec (the "Caisse") and Ontario Teachers' Pension Plan Board ("OTPP" and, together with AIMCo and the Caisse, the "**Fund Managers**", "our" or "we") support the goal of encouraging the offering of securities of non-Canadian issuers to sophisticated Canadian investors.

AIMCo is one of Canada's largest and most diversified institutional investment fund managers, with an investment portfolio of approximately $74.6 billion as at December 31, 2013. We invest globally on behalf of clients and 28 pension, endowment and government funds in the Province of Alberta.

AIMCo became a Crown corporation on January 1, 2008, and its sole shareholder is the Province of Alberta. AIMCo manages funds for a diverse group of Alberta public sector clients. We create portfolios that reflect the clients' chosen risk and return profiles. The majority of AIMCo's assets under management come from Alberta public sector pension plans and provincial endowment funds. Collectively known as AIMCo's Balanced Funds, these clients are primarily invested in equities, bonds and inflation sensitive products. Other assets, managed for the Government of Alberta, are generally invested in money market and short-term bonds.

The pension funds meet the retirement income needs of nearly 310,000 Alberta public sector employees. In 2013, these funds paid out nearly $1.4 billion in pension payments, refunds and administration and investment expenses. The government funds we manage are used for Albertans' priorities such as health care, education, infrastructure and social programs.

Under its constituting statute, the Caisse manages funds for its depositors, primarily public and private pension and insurance plans. It is one of the largest institutional fund managers in Canada and is active on domestic and international financial markets. As at December 31, 2013, its depositors' net assets under management totalled $200.1 billion.

OTPP is the largest single-profession pension plan in Canada, with $129.5 billion in net assets at December 31, 2012. It was established in 1990 by its two sponsors, the Ontario government and the Ontario Teachers' Federation, as an independent organization. In carrying out its mandate, OTPP administers the pension benefits of 179,000 active elementary and secondary school teachers along with 124,000 pensioners.

The Fund Managers are very pleased with the initiative to provide better access to investment opportunities for Canadian institutional investors that began with the provision of temporary exemptive relief for use by certain dealers last year and welcome the opportunity to comment on the proposals to implement exemptive relief on a permanent basis to further that goal.

Our primary concern is the requirement in the proposed amendments to NI 33-105 for compliance with underwriter conflicts of interest standards applicable to U.S. registered offerings, whether or not the offering is registered in the United States or has any connection with the United States other than being one of the jurisdictions in which the securities are being privately placed globally.

We are pleased that proposed MI 45-107 would address an impediment to the participation of the Fund Managers in certain distributions by foreign issuers, in particular initial public offerings, which is the general unavailability of exemptions from the requirements set out in our statutes to obtain the written permission or authorization of the regulator for making representations with respect to the listing of the offered securities[1]. The necessity to seek such permission, and equivalent consents in other provinces, discourages such offerings from being extended to sophisticated Canadian investors, especially in light of time constraints when the requirements of the various jurisdictions in a proposed global offering are considered by foreign dealers.

[1] These include the written permission of the Executive Director of the Alberta Securities Commission pursuant to subsection 92(3) of the *Securities Act* (Alberta) and the authorization of the Autorité des marchés financiers pursuant to paragraph 199(4)(a) of the *Securities Act* (Québec).

1. Comments on Proposed Amendments to NI 33-105

a. Difficulty of Compliance with the Requirements Applicable to a U.S. Registered Offering

i. Requirements Do not Work for a Non-Registered Offering

Based on our discussions with U.S. dealers about obtaining access to foreign securities offerings, the requirement to comply with underwriter conflicts of interest disclosure requirements applicable to a U.S. registered offering remains a major impediment to extending non-U.S. registered offerings into Canada. Since offering documents used for a non-registered offering in the United States are subject to the materiality standard of SEC Rule 10b-5, we understand that the problem is not so much whether disclosure concerning underwriter conflicts of interest would be provided but rather the problem is complying with the technical requirements for providing "prominent disclosure" applicable to a U.S. registered offering for disclosure of underwriter conflicts of interest. As a result, the requirement to comply with the requirements of a U.S. registered offering, as proposed to be included in NI 33-105, would substantially limit the utility of the proposed amendments where a registered offering is not made in the United States. They would continue to prevent the Fund Managers from being able to participate in global offerings in the same manner as U.S. institutional investors participating in an offering not registered in the United States.

The requirement that Canadian wrapper disclosure apply U.S. registered offering standards regardless of whether the securities are actually registered requires issuers and their dealers to provide Canadian permitted clients with additional disclosure beyond that which is required to be provided to institutional investors in the laws of the home jurisdiction of the issuer and/or primary jurisdiction of the offering.

In a global offering made primarily outside of Canada, we believe that Canadian institutional investors do not need to receive additional disclosure than is provided to a U.S. institutional investor for securities distributed on a private placement basis. Sophisticated investors in Canada who decide to invest in foreign jurisdictions understand that those foreign investments may not necessarily be subject to the same disclosure rules as apply in Canada. We recommend that the exemptive relief allow securities of non-Canadian issuers to be offered in Canada on the same basis as they are being offered in the United States and elsewhere.

The proposed amendments to NI 33-105 will not provide adequate access for Canadian permitted clients to offerings by foreign issuers if the proposed requirement for non-U.S. registered offerings to comply with the underwriter conflicts disclosure requirements applicable to U.S. registered offerings is retained. Accordingly, we respectfully submit that the exemption in the case of an offering that is not registered in the United States should not be conditional on compliance with the underwriter conflicts of interest disclosure requirements applicable to a U.S. registered offering.

ii. Extension to Public Offerings in Jurisdictions Other than the United States that Have Conflicts of Interest Disclosure Requirements

We recommend that the exemption from the Canadian disclosure requirements of NI 33-105 be structured so that it can be used where the offering document sent to Canadian institutional investors is subject to the prospectus requirements of another jurisdiction regarding the disclosure of underwriter conflicts of interest so long as Canadian investors receive the prospectus or a global offering document containing substantially the same disclosure.

iii. The Wording of the Condition in the Proposed Amendments to NI 33-105 is too Broad

Proposed paragraph 3A.2(c) of NI 33-105 is drafted in a manner inconsistent with the policy discussion of the proposed amendments by requiring compliance with "the requirements of section

229.508 of SEC Regulation S-K under the 1933 Act and FINRA Rule 5121". The summary of the proposed amendments to NI 33-105 in the Notice and Request for Comment states that an offering document would be required to be "delivered to purchasers that complies with U.S. disclosure requirements on conflicts of interest between issuers and underwriters". The two provisions referenced in the proposed paragraph 3A.2 contain requirements that do not pertain to conflicts of interest between issuers and underwriters. For example, section 229.508 of SEC Regulation S-K is the provision dealing generally with the disclosure of the plan of distribution and it includes disclosure requirements such as (i) a description of any dividend or interest reinvestment distribution plan pursuant to which the securities are offered, (ii) the compensation payable to the underwriters, any other selling dealers and any finders, (iii) a description of indemnification provisions in the underwriting agreement, (iv) a description of intended passive market making, and (v) a description of stabilization transactions.

We recommend that the wording of paragraph 3A.2(c) should be revised to match the language in quotation marks in the previous paragraph.

b. Placing Conditions on Offerings of Government Securities Rated Below Investment Grade Makes Them Unavailable to Canadian Investors

The discretionary exemptive relief that has been granted to dealers has not achieved the goal of enabling sophisticated Canadian investors to participate in offerings of foreign government securities that do not have an approved credit rating as defined in National Instrument 45-106 *Prospectus and Registration Exemptions*.

New offerings of government securities ordinarily are attractively priced relative to equivalent government securities that are available on the secondary market. As a result, demand for these offerings is usually strong and the entire offering sells quickly. Rather than preparing customized Canadian disclosure or even addressing the question of whether or not customized Canadian disclosure is needed (including dealing with the distinction between related issuers and connected issuers), the dealers in this market find it easier to sell to Canadian institutional investors in the secondary market immediately afterwards. At that point, the initial attractive pricing is no longer available. Consequently Canadian institutional investors end up acquiring the same securities as are available to investors in other jurisdictions in the primary offering, except that the Canadian investors will pay a higher price. We find a willingness on the part of issuers and dealers in this market to address Canadian disclosure requirements only if demand for an offering is poor.

Canadian disclosure requirements for primary offerings of government securities that lack an A rating differ from those of markets of comparable size. The same obstacles do not exist for offerings into jurisdictions where dealers know they can include in the offering document the same short, standardized disclosure for any offering of government securities. We recommend that condition (b) be deleted from proposed section 3A.3, regarding the exemption for foreign government securities, in order for Canadian institutional investors to have the same access to distributions of government securities as institutional investors in other jurisdictions. Sophisticated Canadian investors would be adequately protected by receiving the same disclosure in offering documents for the distribution of securities issued or guaranteed by a government as sophisticated investors receive in the United States and elsewhere.

c. Remove Limitation to Non-Reporting Issuers

No policy basis is suggested in the Notice and Request for Comments for the requirement that an issuer may not be "a reporting issuer in a jurisdiction of Canada". Confirmation that this requirement is satisfied necessitates checking the list of reporting issuers of each Canadian province and territory.

We consider that the other restrictions included in the definition of “designated foreign security” should be sufficient for the purpose of the proposed amendments. The other restrictions include the issuer being non-Canadian in terms of its jurisdiction of formation and head office and the residency of a majority of its executive officers and directors and that the offering be made primarily in a foreign jurisdiction.

Our view is that there is insufficient policy rationale for excluding securities of non-Canadian issuers from the benefits of the proposed amendments to NI 33-105 merely because of Canadian reporting issuer status, which will result in lost investment opportunities for Canadian institutional investors where the issuer and dealers decide not to prepare a wrapper.

2. Comment on Proposed MI 45-107

We understand from our discussions with dealers that they favour the option made available in proposed section 3A.6 (Manner of Notice) of NI 33-105 of being able to include a short Canadian section in an offering document in the same manner as they currently address disclosure requirements imposed by many other jurisdictions rather than undertaking a process unique to Canada of sending out separate notices to Canadian investors and tracking which Canadian investors have been provided with those notices.

We are concerned, however, that dealers will be reluctant to use this option if they are required to include the same lengthy description of statutory rights of action included in Canadian wrappers in order to comply with requirements currently applicable in Ontario, Saskatchewan, New Brunswick and Nova Scotia. Requiring instead only a notification of the existence of statutory rights of action, as required for a prospectus filed in Canada, would eliminate this potential obstacle to providing a notice to investors in an offering document, thereby facilitating access to distributions of foreign securities for Canadian permitted clients, without reducing protections provided by Canadian securities legislation.

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Please contact either of the undersigned if you would like to further discuss these issues.

Sincerely yours,

ALBERTA INVESTMENT MANAGEMENT CORPORATION

Darren Baccus
Associate General Legal Counsel

CAISSE DE DÉPÔT ET PLACEMENT DU QUEBEC

Marie Giguère
Executive Vice-President, Legal Affairs and Secretariat

ONTARIO TEACHERS' PENSION PLAN BOARD

Jeff Davis
Vice-President and Associate General Counsel

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Darren Baccus
Associate General Legal Counsel

CAISSE DE DÉPÔT ET PLACEMENT DU QUEBEC

Sophie Lussier
Senior Director, Legal Affairs, Financial Markets and Derivatives

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