RBC GLOBAL ASSET MANAGEMENT INC.
AGF INVESTMENTS INC.

Via Email

February 26, 2014

British Columbia Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
Ontario Securities Commission
Financial and Consumer Services Commission of New Brunswick
Superintendent of Securities, Newfoundland and Labrador
Superintendent of Securities, Yukon Territory
Superintendent of Securities, Nunavut

The Secretary
Ontario Securities Commission
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Autorité des marchés financiers
Superintendent of Securities, Prince Edward Island
Nova Scotia Securities Commission

Superintendent of Securities, Northwest Territories

Me Anne-Marie Beaudoin
Corporate Secretary
Autorité des marchés financiers
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Montréal, Québec H4Z 1G3

Re: Proposed Amendments to National Instrument 33-105 *Underwriting Conflicts* ("NI 33-105")

Re: Proposed Multilateral Instrument 45-107 *Listing Representation and Statutory Rights of Action Disclosure Exemptions* ("MI 45-107")

The undersigned portfolio managers and investment fund managers of Canadian mutual funds, RBC Global Asset Management Inc. ("**RBC GAM**") and AGF Investments Inc. ("**AGF**" and, together with RBC GAM, "**Canadian Mutual Fund Managers**", "our" or "we") are writing in response to the request for comments on the proposed amendments to NI 33-105 and proposed MI 45-107 (collectively, the "**Proposals**") and appreciate the opportunity to convey our comments on the Proposals, which we believe are shared broadly by the Canadian institutional investor community.

RBC GAM is a wholly-owned subsidiary of Royal Bank of Canada ("**RBC**") and provides a broad range of investment management services and solutions to investors across Canada, including through a variety of mutual funds. As at December 31, 2013, RBC GAM had assets under management ("**AUM**") of $319.7 billion, of which $220.4 billion were investments for Canadian investors through mutual funds, pooled funds and segregated assets. Of the amount invested for Canadian investors, $108.8 billion was in fixed income mandates, including $9 billion in dedicated bond funds offering access to international bond markets. This does not include allocations in various balanced funds that include foreign bonds in their portfolios as market conditions warrant. Mutual funds managed by RBC GAM that invest in bonds of non-Canadian issuers are:

Fund	Assets Under Management
RBC Global Bond Fund	$3.1 billion
RBC Global Corporate Bond Fund	$1.33 billion
RBC Global High Yield Fund	$1.26 billion
RBC High Yield Bond Fund	$1.15 billion
BlueBay Global Monthly Income Bond Fund	$632 million
BlueBay Global Convertible Bond Fund (Canada)	$469 million
BlueBay Emerging Markets Corporate Bond Fund	US$474 million
RBC Emerging Markets Bond Fund	$360 million
RBC $U.S. Investment Grade Corporate Bond Fund	US$51 milliion
RBC $U.S. High Yield Bond Fund	US$24 million
RBC Monthly Income High Yield Bond Fund	$8 million

RBC GAM also manages a number of mutual funds dedicated to U.S., international and global equity mandates, for aggregate AUM of more than $22 billion as of December 31, 2013.

AGF is a Canadian independent wealth management company, offering investment management products and services to retail, institutional and high net worth investors in Canada and internationally. As at December 31, 2013, AGF had AUM of $35.5 billion, of which more than $5 billion was in fixed income mandates, including the fixed income portion of balanced fund mandates. Among the investment alternatives that AGF makes available for international investing are:

Fund	Assets Under Management
AGF Total Return Bond Fund	More than $413 million
AGF Global Aggregate Bond Fund	More than $237 million
AGF Emerging Markets Bond Fund	More than $162 million
AGF Global Government Bond Fund	More than $90 million

I. Summary

In order for Canadian institutional investors such as the Canadian Mutual Fund Managers to be provided with the same access to foreign offerings as is provided to institutional investors in the United States and elsewhere around the world, it will be necessary for Canadian legal requirements to be capable of being addressed in the same manner as in other jurisdictions, namely through short, standardized disclosure that can be inserted into an offering document, without the necessity of making a determination whether or not the disclosure suffices for a particular distribution or requires customization. Only exemptive relief of that nature will enable Canadian mutual funds to have the same access to international investment opportunities as is available to mutual funds elsewhere.

We submit that the Proposals should apply the principle that the level of disclosure in a U.S. private placement or in a global offering, a portion of which is privately placed with U.S. investors, should be considered adequate for Canadian permitted clients.

II. Background

The primary concern we address in this letter is the loss of opportunities impacting many Canadian investors (whether individual investors through mutual fund investments or institutional investors when investing in international bonds directly) that results from the need for dealers to determine whether or not a wrapper is required for an offering of international bonds into Canada and, if applicable, to prepare a wrapper.

A. Impact of the Need to Prepare a Canadian Wrapper

Canadian bond markets represent 2.48% of the world's total outstanding debt securities.[1] Canadian investors look to international investment alternatives both for opportunities to enhance the yield on their fixed income investments as well as for opportunities to diversify and thus reduce risk in their fixed income holdings by issuer, by credit market and by currency. For an indication of the size of this market, we note that for the external (*i.e.*, non-local currency) emerging bond markets alone, in the current year to February 6, 2014 there were 113 new offerings from 30 different countries.[2] Canadian institutional investors are excluded from nearly all of these offerings.

Issuers of international bonds frequently issue bonds at attractive yields or price concessions relative to their existing bonds to encourage purchases by international institutional investors. New issuers similarly offer concessionary pricing in an effort to encourage purchases by institutional investors who are unfamiliar with the issuer. This attractive pricing most often results in a large demand for the offering, with order books for such offerings commonly in multiples of the size of the offering. With a high demand for their bonds, issuers in a global offering usually are unconcerned that Canadian institutional investors are unable to purchase their bonds.

As a consequence of price concessions, investors benefit, on the whole, from having access to new international bond offerings, through higher yields and/or sharp price increases that may occur, frequently almost immediately after completion of the offering. If Canadian institutional investors lack access to new offerings, Canadians are unable to benefit from attractive investment opportunities and suffer direct financial loss. Two aspects make this situation particularly frustrating:

1. Within moments after an offering is launched, while the offering is still in distribution, foreign dealers are able to sell the bonds to Canadian permitted clients in the secondary market, by which time the prices commonly have gapped to a higher level. This results in the Canadian Mutual Fund Managers acquiring for their funds the same securities that they were unable to acquire in the primary offering without receiving any disclosure required by Canadian legislation or by the conditions of the discretionary exemptive relief granted to the dealers, while Canadian investors in their funds end up worse off financially.

2. When an existing issue is re-opened, the Canadian Mutual Fund Managers may already hold the bonds in one or more investment portfolios, but be unable to add to a position at an attractive price with regard to an issuer on which it has already been conducting due diligence on an ongoing basis, due to the exclusion of Canadian investors from participating in the offering.

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[1] From the Bank for International Settlements, Quarterly Review (December 2013), data from June 2013, organized by residency of issuer.

[2] From Bond Radar.

As the investment world globalizes, offerings are led by dealers from a variety of jurisdictions. Aside from New York, this includes London and various Asian regional headquarters such as Singapore and Hong Kong. The vast majority of issuers, particularly governments and corporate issuers outside of the United States, lack familiarity with Canadian securities laws, as do many of the dealers' syndicate desks. The size of the U.S. investor base commonly justifies the time and expense of complying with U.S. requirements for private placements.[3] The size of the Canadian investor base is not viewed by issuers or dealers as justifying any time and expense in addressing compliance with Canadian requirements, with dealers having order books multiples of the issue size knowing they can sell the bonds to Canadian institutional investors in the secondary market.

Due to confidentiality requirements, bond offerings are announced with little advance warning. This time constraint, further complicated by multiple time zones, accentuates the problem of syndicate desks being unfamiliar with Canadian securities legislation and preferring not to deal with it. This is a market in which Canadian wrappers are rarely prepared. Meanwhile, dealers have been failing to take advantage of discretionary exemptive relief that they find to be overly confusing and that they understand to require a time consuming, case-by-case analysis. During periods when offerings are particularly active and demand for bonds is buoyant, even issuers familiar with Canadian disclosure requirements are reluctant to incur the extra time and costs associated with preparing a wrapper or determining the possible availability of exemptive relief. Further, a Canadian wrapper is most likely to be prepared, or the current exemptive relief used, in the case of issuers having lower quality credit for which demand, including potential Canadian interest, is weak. Thus, in addition to Canadian mutual funds paying higher prices for internationally offered bonds, Canadian securities legislation has the effect of discouraging dealers from adding a Canadian wrapper even for those offerings with less buoyant demand. If Canadian institutional investors have not provided a firm commitment to participate in the issue, there is still little incentive to prepare a Canadian wrapper. Offerings may only have a Canadian wrapper because there is a poor reception in other markets due to issues or problems associated with it.

Finally, reduced access to favourable investment opportunities hurts the ability of Canadian fund managers to compete internationally with non-Canadian fund managers, who have a performance advantage as a result of their greater ability to participate in new issues at favourable pricing. Investors seeking to allocate mandates look at performance and even a small degree of excess performance over short periods can add up to a significant competitive advantage over time when it occurs regularly and is compounded over time, such as the five-year time horizon that such investors typically consider.

B. Inadequacy of the Temporary Exemptive Relief as a Solution

The loss of favourable investment opportunities for its Canadian mutual funds that invest in foreign securities as a result of the need for a customized "wrapper" containing specific Canadian disclosure items has been a longstanding concern of RBC GAM. As mentioned in the initial application dated May 2, 2011 that was filed by two affiliates of RBC GAM, RBC Capital Markets, LLC and RBC Dominion Securities Inc., among others, to request discretionary exemptive relief from those disclosure items (the "**Application**"), a representative of RBC met with OSC staff beforehand to present the concern of RBC GAM about being excluded from participating in foreign distributions because the issuer or distribution participants are unwilling to incur the costs and delays associated with complying with Canadian securities law requirements. The Application further stated: "Counsel to the Applicants has been advised by each of **RBC Global Asset Management Inc., Canada Pension Plan Investment Board, Ontario Municipal Employees Retirement System and Caisse**

[3] Of the 411 issues within the J.P. Morgan Emerging Market Bond Index (Global-Diversified), 66% were offered under SEC Regulation S, without registration in the United States.

de dépôt et placement du Québec, purchasers in such offerings, that they support this Application."

The Canadian Mutual Fund Managers appreciate the time that the Ontario Securities Commission has taken to meet with their representatives, on more than one occasion, and to coordinate with the other Canadian securities regulators in addressing their concerns. We also appreciate the extensive efforts the Canadian securities regulators have made in providing discretionary exemptive relief as well as the opportunity to provide feedback on our experience with this temporary exemptive relief.

Unfortunately our experience with the temporary exemptive relief has been disappointing.

In discussions with dealers, we have found that the greatest barrier to reliance on the exemptive relief has been the inclusion of conditions mandating compliance with the disclosure requirements applicable to a U.S. registered offering with respect to underwriter conflicts of interest. This result has occurred even for the distribution of securities issued or guaranteed by a government where compliance with the requirements of a U.S. registered offering is an alternative to compliance with Canadian "related issuer" disclosure requirements in the body of the offering document. There is a lack of understanding in the market that disclosure is required only where the government issuer controls more than 20% of the voting rights of a single member of the underwriting syndicate. We are told by dealers that they believe all offering documents require legal review to ensure compliance with the discretionary exemptive relief. Not only is there insufficient time to prepare a Canadian wrapper, we are finding there is insufficient time for the dealers' representatives to make the determination that a Canadian wrapper is not needed, except for the occasional distribution that encounters a poor reception in the market.

Again, the issue of coordination across global syndicate platforms on the preparation of non-standardized disclosure has proven to be a major hurdle. Non-standardized disclosure for a particular jurisdiction is not common practice in this market. Dealers have continued to prohibit sales to Canadian institutional investors such as ourselves despite the discretionary exemptive relief where there is no Canadian wrapper.

We believe this problem stems in part from confusion over the conditional drafting of the exemption for foreign securities issued or guaranteed by governments in the discretionary exemption orders, with the reference to compliance with the requirements of a U.S. registered offering being a principal source of confusion. The drafting of the proposed amendments to NI 33-105 improves this situation by removing references to U.S. registered offerings in sections 3A.3 and 3A.4, which specifically relate to distributions of securities issued or guaranteed by governments. However, as set out below, we recommend that compliance with the requirements of U.S. registered offerings not apply at all to distributions of foreign government securities.

It is important to note that dealers have little or no incentive to be educated on whether and how the exemptive relief will apply to a particular offering, given the speed at which these offerings are conducted, as noted above, and the popularity of these offerings with institutional investors based in other jurisdictions that do not have comparable requirements. Even if a particular dealer understands and applies the requirements successfully for a given offering, educating dealers and their personnel would be a constant and continuously disruptive process due to the multitude of different markets in which such dealers are based and ongoing personnel changes.

III. Specific Comments on the Proposals

Our specific comments relate to the following aspects of the Proposals:

A. The requirement to comply with Canadian disclosure requirements for distributions of securities issued or guaranteed by a non-Canadian government. We recommend that

sophisticated Canadian investors should receive the same disclosure as is received by sophisticated investors in the United States and elsewhere when they invest in newly distributed government securities, together with a standardized legend about the inapplicability of particular Canadian disclosure requirements.

B. The requirement to comply with the requirements applicable to a U.S. registered offering. We recommend that:

   1. On the basis that the level of disclosure in a U.S. private placement or in a global offering a portion of which is privately placed with U.S. investors should be considered adequate for Canadian permitted clients, we recommend that compliance with the requirements of a U.S. registered offering should apply only to U.S. registered offerings.

   2. Proposed section 3A.2 of NI 33-105 should apply only to designated foreign securities other than foreign government securities.

   3. Proposed paragraph 3A.2(c) of NI 33-105 should only refer to disclosure of underwriter conflicts of interest between the underwriter and the issuer or selling securityholder instead of cross-referencing section numbers that contain requirements unrelated to underwriter conflicts of interest.

   4. If the requirement to comply with the disclosure requirements relating to underwriter conflicts of interest for U.S. registered offerings is retained for distributions of non-government securities, compliance with the disclosure requirements for public offerings in other jurisdictions that apply to the offering document should be permitted as an alternative requirement.

C. The manner of providing notice and contents of the notice. We recommend that the required disclosure should be limited at most to notification of the existence of statutory rights of action, as in the case of the notices provided by dealers relying on the discretionary orders, instead of a description of those rights.

D. The limitation to issuers that are not reporting issuers in a Canadian jurisdiction. We recommend deletion of the requirement that the proposed exemptions be available only to an issuer if it is not a reporting issuer in any Canadian jurisdiction.

Our comments follow the distinction made in the Proposals between securities that are issued or guaranteed by a government and other securities, but we note that many of the concerns with respect to foreign government securities also apply to debt securities issued by government agencies (quasi-government securities) and corporations.

A. Compliance with Canadian Disclosure Requirements for Distributions of Foreign Government Securities

Further to our general comments above, our most significant concern with the Proposals is proposed paragraph (b) of section 3A.3 of NI 33-105, which would continue to require related issuer disclosure in the body of the offering document for the distribution of securities issued or guaranteed by a foreign government. While we recognize this requirement would apply infrequently, though with increased likelihood following the bank bail-outs of the past several years, its presence nonetheless can act as an obstacle to our access to distributions of foreign government securities. The problem is that, to our knowledge, no jurisdiction other than the Canadian provinces and territories imposes a disclosure requirement with respect to those types of securities that have the potential to require individualized analysis as to applicability and disclosure for one group of investors (*i.e.*, Canadian permitted clients) that may require customization. The requirement is sufficient to cause dealers and

issuers to forego making available newly distributed foreign government securities to Canadian institutional investors. In our view it is important to weigh the very limited benefit of obtaining Canadian related issuer disclosure in the circumstances in which a government owns or controls a dealer that may be distributing the securities into Canada against the number of times Canadian permitted clients are excluded from these offerings.

We respectfully submit that sophisticated Canadian investors would be adequately protected by the same level of disclosure received by sophisticated investors in the United States and elsewhere when they invest in newly distributed government securities, together with a standardized legend about the inapplicability of particular Canadian disclosure requirements.

B. Compliance with Requirements Applicable to a U.S. Registered Offering

1. The Requirements of a U.S. Registered Offering Should not Apply to a Non-Registered Offering of Non-Government Securities

Distributions of securities of non-government issuers that are not registered in the United States occasionally are made available to the Canadian Mutual Fund Managers, either through preparation of a Canadian wrapper or reliance on the discretionary exemptions that have been granted to certain dealers. However, we have been precluded from participating in much larger numbers of non-registered offerings as a result of the requirement to comply with the requirements applicable to a U.S. registered offering with respect to disclosure of underwriter conflicts of interest. A particular obstacle is compliance with the technical aspects of FINRA Rule 5121's "prominent disclosure" requirement.

We submit that the Proposals should apply the principle that the level of disclosure in a U.S. private placement or in a global offering a portion of which is privately placed with U.S. investors should be considered adequate for Canadian permitted clients. We note that this principle prevails for all disclosure requirements in Canadian securities legislation other than the disclosure requirements of NI 33-105 and, in certain provinces, a description of the rights of action available to investors in the event of a misrepresentation in an offering document. Under the Proposals, Canadian securities legislation would impose certain requirements of U.S. securities legislation in order for a distribution of securities to be made available to sophisticated Canadian investors where U.S. securities legislation does not apply those requirements in order for the securities to be distributed to sophisticated U.S. investors. We strongly recommend deletion of this condition.

2. Do not Apply the Exemption Based on U.S. Disclosure to Foreign Government Securities

The disclosure provisions in section 229.508 of SEC Regulation S-K with respect to underwriter conflicts for U.S. registered offerings apply to offerings by non-government issuers. When a dealer participating in a government offering sees a reference to complying with the requirements of U.S. registered offerings being applied to government offerings, the result has been confusion and a greater tendency to exclude Canadian investors given the time constraints typical of those offerings rather than to endeavour to understand how the exemption works as a whole. Accordingly, we recommend that if the exemption in proposed section 3A.2 of NI 33-105 retains any requirement to comply with the disclosure the requirements of a U.S. registered offering, that section should exclude foreign government securities by referring to "a designated foreign security *other than a foreign government security*" (wording in italics added)."

3. The Wording of Proposed Paragraph 3A.2(c) of NI 33-105 is Excessively Broad

Proposed paragraph 3A.2(c) of NI 33-105 requiring compliance with "the requirements of section 229.508 of SEC Regulation S-K under the 1933 Act and FINRA Rule 5121" is excessively broad in

comparison with the discretionary relief that has been granted to those dealers. The condition in the order granted to RBC GAM's affiliates, RBC Capital Markets, LLC and RBC Dominion Securities Inc., among others, on October 22, 2013, imposes as a condition compliance with "the disclosure requirements applicable to a U.S. Registered Offering with respect to disclosure of underwriter conflicts of interest between the [dealer] and the issuer or selling securityholder". However, the requirements in proposed paragraph 3A.2(c) include disclosure requirements concerned with the plan of distribution generally, not just conflicts of interest, as well as substantive requirements.

Regardless of the substantive revisions discussed above, the wording should be revised to specifically refer to disclosure of underwriter conflicts of interest between the underwriter and the issuer or selling securityholder, as in the discretionary orders that have been granted to the dealers. Such a revision would be consistent with the statement in the summary provided in the Notice and Request for Comment concerning the proposed revisions to NI 33-105 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".

4. Include Jurisdictions Other than the United States that Have Disclosure Requirements Concerning Underwriter Conflicts

We recommend that, if the requirement to comply with the disclosure requirements relating to underwriter conflicts of interest for U.S. registered offerings is retained for distributions of non-government securities, compliance with the disclosure requirements for public offerings in other jurisdictions that apply to the offering document should be permitted as an alternative requirement. That modification would enable more of the benefits of the Proposals to be achieved where a distribution is made to the public in one jurisdiction, such as where equity securities are to be listed, and only to institutional investors in the remaining global portion of the distribution.

C. Provision of Notice Through Standardized Disclosure in the Offering Document

The Proposals would work best if, as in the case of other jurisdictions worldwide, Canadian disclosure requirements could be satisfied through short standardized disclosure in the offering document. Proposed subparagraph 3A.6(b)(ii) of NI 33-105 achieves this in part by enabling a notice to permitted clients to be provided within the offering document. This is a substantial improvement over the requirement in the discretionary exemption orders for a notice to be provided to each potential investor, and acknowledgement obtained, before the offering document is delivered.

However, this notice requirement does not mesh with the proposed disclosure requirement in MI 45-107 nor with the requirement previously proposed in the Notice and Request for Comment dated April 25, 2013 concerning amendments to OSC Rule 45-501 *Ontario Prospectus and Registration Exemptions*, which would continue to require a description of the statutory rights of action available in four provinces. As a result of the details of the statutory rights of action differing among these provinces, the description of the statutory rights of action where a private placement is made available to potential investors in all four provinces is lengthy and, if included in a global offering document, would be completely disproportionate to the extent of disclosure currently provided in respect of the legislation of other countries. Accordingly, we submit that the required disclosure should be limited, at most, to notification of the existence of statutory rights of action, as in the case of the notices provided by dealers relying on the discretionary orders, instead of a description of those rights.[4]

[4] A potential investor is unlikely to find a description of statutory rights of action in the event of a misrepresentation to be of interest when reading an offering document in the context of a distribution of

D. Expand the Availability of the Proposed Exemptions to Reporting Issuers

A further obstacle to the utility of the Proposals is the limitation to issuers that are not reporting issuers of a jurisdiction of Canada. This may limit the willingness of dealers to rely on the proposed exemptions due to the possible need to check the reporting issuer status of an issuer in all 13 Canadian provinces and territories, whether or not available on a website. We respectfully submit that the restrictions in the definition of "designated foreign security" that an issuer's jurisdiction of formation be a non-Canadian jurisdiction, that its head office be outside Canada, that the majority of its executive officers and directors be resident outside Canada, and that the offering be made primarily in a foreign jurisdiction are sufficient without the further restriction that an issuer not be a reporting issuer in any Canadian jurisdiction. The status of an issuer as a reporting issuer in Canada does not make its securities less foreign from the perspective of a Canadian investor.

Thank you for considering our comments on the Proposals. If you have any questions or require further information, please do not hesitate to contact any of the undersigned.

Yours very truly,

RBC GLOBAL ASSET MANAGEMENT INC.

Daniel E. Chornous, CFA
Chief Investment Officer

AGF INVESTMENTS INC.

Mark Adams
SVP, General Counsel & Corporate Secretary

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securities and we would favour an elimination of the requirement to describe statutory rights of action in any offering memorandum, whether for the distribution of securities of a non-Canadian issuer or of a Canadian issuer. Elimination of this disclosure requirement would put offering memoranda for private placements on the same footing as prospectuses filed with the Canadian securities regulatory authorities in this respect.

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