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BY E-MAIL May 28, 2014

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Financial and Consumer Affairs Authority (Saskatchewan)
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
Financial and Consumer Services Commission (New Brunswick)
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island
Nova Scotia Securities Commission
Securities Commission of Newfoundland and Labrador
Registrar of Securities, Northwest Territories
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Dear Sirs/Mesdames:

Re: Comments on Proposed Amendments to Accredited Investor and Minimum Amount Investment Prospectus Exemptions

We submit the following comments in response to the Notice and Request for Comments published by the Canadian Securities Administrators (the "**CSA**") on

TORONTO
MONTREAL
OTTAWA
CALGARY
VANCOUVER
NEW YORK
LONDON
SYDNEY

February 27, 2014 with respect to proposed amendments (the "**Proposed Amendments**") to National Instrument 45-106 *Prospectus and Registration Exemptions* ("**NI 45-106**") and Companion Policy 45-106CP *Prospectus and Registration Exemptions* ("**45-106CP**") related to the accredited investor prospectus exemption in section 2.3 of NI 45-106 and section 73.3 of the *Securities Act* (Ontario) (the "**AI Exemption**"), the minimum amount investment prospectus exemption in section 2.10 of NI 45-106 (the "**MA Exemption**") and Form 45-106F1 *Report of Exempt Distribution* ("**Form 45-106F1**").

We have organized our comments below with reference to the proposed rule, policy or form to which the comments relate. All references to parts and sections are to the relevant parts or sections of the applicable rule, policy or form.

Thank you for the opportunity to comment on the Proposed Amendments. 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.

A. AI Exemption

a. ***Definition of "accredited investor"***

With respect to paragraph (e) of the definition of "accredited investor" in section 1.1 of NI 45-106, we respectfully submit that the proposed addition is confusing in that it could result in an individual who is currently registered under securities legislation as a representative of a person referred to in paragraph (d) of the same definition not being considered to be an accredited investor if he or she was formerly registered solely as a representative of a limited market dealer in either Ontario or Newfoundland and Labrador. We believe that if such a person is currently registered under the securities legislation of a Canadian jurisdiction, he or she should qualify as an accredited investor regardless of whether he or she was formerly a representative of a limited market dealer in Ontario or Newfoundland and Labrador. We acknowledge that by referring to "solely", the intention may be to restrict the carve-out in this definition to those whose only former registration was in the capacity as a representative of a limited market dealer; however, we suggest clarifying the language to avoid ambiguity.

We agree that a family trust should be included in the definition of "accredited investor"; however, we submit that the proposed paragraph (w) of the definition of "accredited investor" should also include trusts whose beneficiaries are former spouses and family members of former spouses of that accredited investor.

b. ***Risk Acknowledgement Form***

We have a number of concerns with the proposed requirement that an issuer obtain from a purchaser who is an individual a signed risk acknowledgement form (a "**RAF**") at the same time or before the individual signs the purchase agreement in

order for the AI Exemption to apply to a distribution. While we acknowledge the concerns expressed by the CSA in proposing this additional requirement, we urge the CSA to consider the practicality of imposing such a requirement on issuers.

In particular, we anticipate that the RAF requirement will place an administrative burden on issuers as the RAF must be presented to purchasers in physical form on one double-sided page and two (2) copies of the form are required to be physically signed. In keeping with developing practices in terms of how transactions are executed, the bulk of document execution and delivery now takes place electronically and not in physical form. As such, if the RAF requirement is retained, accommodation should be expressly made for electronic transmission, execution and retention.

We also note that the additional administrative burden of the RAF may preclude, in particular, foreign issuers from conducting distributions in Canada. To the extent the CSA wishes to add additional documentary requirements to offerings in Canada, any benefit of these potentially burdensome requirements should be weighed against the benefit of foreign issuers conducting distributions in Canada and Canadian investors having access to such investment opportunities.

We are also concerned with the requirement that the issuer keep a copy of the RAF for eight (8) years following the distribution. We consider this to be an unnecessarily lengthy period of time that does not appear to reflect applicable retention or limitation periods under either Canadian securities laws or IIROC requirements. Once again we note the administrative burden of maintaining RAFs, particularly for such a lengthy period of time. Further, it is unclear to us whether the RAF is required to be retained in physical form and note that for issuers who frequently rely on the AI Exemption, this requirement could result in large quantities of paper being maintained by the issuer. We respectfully request that the CSA clarify that RAFs need not be physically retained and that retention of electronic copies of the RAF will satisfy the retention requirement.

We would also note that most of the information included in the RAF is information that would typically be included in the subscription agreement between an investor and the issuer. Imposing the RAF requirement might be seen as undermining the validity of representations made in subscription agreements and as calling into question the ability to rely on them (see section 1.9 of 45-106CP). We submit that to do so amounts to requiring the conducting of due diligence as to the basis of counterparty representations in agreements between commercial parties where, typically, unless a party is aware of a reason to question a particular representation, such party is entitled to rely on the representation without further investigation.

In addition to the administrative burden related to the execution and retention of the RAF, we respectfully submit that if the CSA is concerned with investors investing in inappropriate products or products which the investor does not understand, the proper avenue to address this concern is through dealer "know your client", "know your product" and suitability obligations, and that requiring an

additional RAF will not address the investor "gap" (i.e., whether an investor understands the products in which he or she is investing and whether the products are appropriate for the particular investor), to the extent there is one. We note that a dealer involved in a distribution already has "know your client", "know your product" and suitability obligations. In the event that an investor is purchasing securities directly from the issuer, we acknowledge that such investor protections will not be available; however, we believe that these concerns can be addressed by requiring the issuer to disclose to the investor that the issuer is not a registrant and therefore is not subject to the same obligations vis-à-vis the investor as a dealer.

As such, in our view, given the administrative burden of completing and maintaining the RAF, the duplicative nature of the information contained in the RAF and our other above stated concerns, the CSA may wish to reconsider the RAF or consider alternatives to this requirement, such as requiring that such disclosure be provided and acknowledged, while leaving it to the issuer or registrant to determine the appropriate form. Other options to provide greater flexibility to address the needs and circumstances of the broad range of capital market participants should also be considered. For example, it may be appropriate to impose the RAF requirement only upon investors investing below a particular threshold. Further, in certain circumstances, an "evergreen" RAF may be appropriate (similar to, for example, the notice requirement in the April 2013 "wrapper" relief), particularly where an investor has an ongoing relationship with a dealer and/or an investment strategy that suits the use of an evergreen RAF. At the very least, we urge the CSA to revise the Proposed Amendments to allow for electronic execution, dissemination and retention of the RAF and for a shorter retention period.

c. *Risk Acknowledgement Form – Technical Issues*

With regard to the specific requirements on the RAF, we note that part 5 of the RAF is required "to be completed by the person involved in the sale of the securities". The instructions included on the RAF further state that "[a]ny person involved in meeting with the purchaser or providing information to the purchaser must complete this section by answering 'yes' or 'no' and filling in their contact information before delivering this form to the purchaser". We are of the view that it is unclear who the "person involved" in the sale or a meeting would be. "Involved" is a broad and ambiguous term that may include individuals who are not directly participating in the sale of the securities, such as, for example, referring parties, lawyers, etc. In addition, we note that in many cases there may be more than one person "involved", potentially resulting in more than one RAF being required to be completed for a particular purchaser to account for multiple persons involved in the same sale. We are of the view that only one RAF should be required per purchaser and that only one person involved in the sale of the securities (being an authorized representative of the registrant or of the issuer) be required to complete the RAF.

Finally, we are of the view that the requirement that a person involved in the sale of the securities select "yes" or "no" with regard to the statement that he or she is "generally not qualified to provide investment advice" is inappropriate. This

statement is confusing, ambiguous and may imply to the purchaser that the person is not qualified to sell securities. We do not take issue with certification as to whether a person involved with the sale of securities is registered with a securities regulator, which by contrast, is clear and factually based.

B. MA Exemption

a. Exclusion of Individuals

While we recognize the CSA's concerns with the use of the MA Exemption for individuals and we acknowledge the CSA's empirical data that individual purchasers, when given the opportunity to determine the amount of their investment, would often invest less than $150,000, unless there is a demonstrable concern we do not see why individuals who invest on the basis of the MA Exemption should be excluded. In particular, we respectfully submit that the exclusion of individuals from the MA Exemption is inconsistent with the CSA's approach to other prospectus exemptions. For example, individuals are permitted to determine the value of their investments under the AI Exemption and the AI Exemption does not prevent an investor from investing a significant amount in one particular investment or from making significant investments in multiple issuers. Furthermore, investors may choose the MA Exemption even if they qualify for other exemptions for various reasons, including, for example, privacy concerns surrounding disclosure of their accredited investor status. As such, we are of the belief that the appropriate manner to address such concerns may not be to remove individuals from the MA Exemption but to focus on "know your client" and "know your product" requirements for registrants.

In addition, we ask that the CSA please confirm that the exclusion of individuals from the MA Exemption would not extend to holding companies of such individuals.

b. Persons Created Solely to Purchase or Hold Securities

We note that the prohibition in section 2.10(2) of NI 45-106 may be unduly restrictive in circumstances where an investor wishes to invest through a holding company or similar entity. We also note that investors create holding companies and subsidiaries for numerous reasons, including tax and estate planning purposes and seeking to ensure limited liability, and this section of NI 45-106 may preclude such entities from investing under the MA Exemption. To the extent that the CSA is concerned with parties aggregating funds in an acquisition entity in order to rely on the MA Exemption, we respectfully submit that such concern would be better addressed through policy and rule guidance to that effect.

C. Form 45-106F1 - ***Report of Exempt Distribution***

a. ***Item 3: Industry Categories***

We appreciate that additional industry categories have been added to Form 45-106F1; however, we respectfully suggest that definitions or further guidance be provided as to what is meant by these categories to avoid ambiguity and to assist with completing Form 45-106F1.

b. ***Item 7: Jurisdiction of Purchasers***

We are commenting on the Proposed Amendments to Form 45-106F1 which state that the report should identify any purchasers in each Canadian and foreign jurisdiction. While we acknowledge the guidance that says that the filer must look to the local securities regulation to determine if there is a distribution in that jurisdiction, we strongly urge certain CSA members to take this opportunity to clarify when there is a distribution in the local jurisdiction.

In this respect, we have set out below our comments to all CSA members, and specific comments to certain CSA members, based on our understanding of the law (or regulatory staff views) in each jurisdiction with regard to whether or not a distribution to a purchaser outside the local jurisdiction is a distribution in the local jurisdiction.

As expressed in section 1.3 of 45-106CP, a person must comply with securities legislation in each jurisdiction "where the distribution occurs." In our view, a Form 45-106F1 should be filed in a jurisdiction only when a distribution has occurred *in that jurisdiction*, identifying only those purchasers *in that jurisdiction* to whom the distribution is a distribution. We acknowledge that the laws and regulatory staff views across the CSA jurisdictions differ with respect to when a distribution is considered to occur in the jurisdiction. However, we urge the CSA to ensure that Form 45-106F1 and all staff guidance and instructions are carefully drafted to accurately reflect the law in each jurisdiction.

For example, generally, if the issuer has a substantial connection to Alberta, British Columbia or Quebec and the issuer distributes securities to a purchaser outside of the local province, such a distribution is considered by the regulators to be a distribution in the local province and therefore that purchaser must be identified in Form 45-106F1.[1] (We are using Alberta, British Columbia and Quebec in this example as it appears to be clear, in these provinces, that a distribution by an Alberta/British Columbia/Quebec issuer is seen by the regulators to take place in the local jurisdiction even if the purchaser is in another jurisdiction, on account of ASC Rule 72-501 and AB Policy 45-601, BC Instrument 72-503 and BCIN 72-202 and section 12 of the *Securities Act* (Quebec) (as interpreted by an AMF Staff Notice dated March 31, 2006 published in the Bulletin de l'Autorité des marchés financiers (2006-03-31 at

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[1] While we have not included Saskatchewan in our comments above, we understand that under Saskatchewan General Order Ruling 72-901 this is also the position in Saskatchewan. However, we would appreciate some clarification as to whether this is the position that is applied and enforced by the Saskatchewan Financial Services Commission.

page 2)). While beyond the scope of this comment letter, there are also broader implications from a constitutional perspective arising from these questions.

However, if an issuer does not have a substantial connection to Alberta, British Columbia or Quebec and distributes securities into Alberta, British Columbia or Quebec, the Form 45-106F1 should only identify purchasers in the local province, and not any purchasers outside of the local province, as the distribution to such purchasers is not a "distribution" in the local province. This is also what is clearly contemplated by the "Guidelines for completing and filing Form 45-106F6" in the BC Form, which states as follows:

> *In British Columbia, "distribution" also includes distributions made from another Canadian or foreign jurisdiction to purchasers resident in British Columbia. If the issuer is from another Canadian or foreign jurisdiction, complete the tables in item 8 and Schedules I and II <u>only for purchasers resident in British Columbia</u>. [Emphasis added.]*

With respect to all other provinces, we are not aware of any such express guidance. Further, for other jurisdictions, we are also not aware of any similar bright-line test for determining when a distribution occurs in the province**.** In Ontario, for example, Interpretation Note 1 (to former Commission Policy 1.5, "Distribution of Securities Outside of Ontario") sets out the circumstances when a distribution outside of Ontario may be considered a distribution in Ontario as well. In our view, it is important to note the operative paragraph of Interpretation Note 1 which states:

> *In light of [s. 53(1)] of the Act, including the broad definition of "trade," and <u>depending on the connecting factors with Ontario</u>, a distribution of securities outside Ontario by Ontario or non-Ontario issuers <u>might</u> also be considered to be a distribution of securities in Ontario…. However, where a distribution is effected outside of Ontario by Ontario or non-Ontario issuers and where reasonable steps are taken…to ensure that such securities come to rest outside of Ontario, the Commission takes the view that a prospectus is not required under the Act, nor an exemption from the prospectus requirements necessary." [Emphasis added.]*

In light of the foregoing, it is our view that the following guidance and/or instructions published by the CSA are confusing, and in some cases, not reflective of the law in some of the jurisdictions or constitutional limitations.

i. <u>Item 7 of Form 45-106F1</u>

Item 7 requires that the table in Item 7 be completed "for each Canadian and foreign jurisdiction where the purchasers of the securities reside." This should more accurately provide that Item 7 be completed "for each purchaser in the local

jurisdiction, and each purchaser outside of the local jurisdiction where the distribution to that purchaser is a distribution in the local jurisdiction." As currently drafted, the instruction implies that, for example, a foreign issuer that has no connection to any Canadian province or territory and which distributes securities into Canada as part of a larger international offering is required to identify each purchaser in every jurisdiction worldwide. We make the same comment with respect to the Proposed Amendment to column 1 of the table in Item 7.

ii. CSA Staff Notice 45-308 – *Guidance for Preparing and Filing Reports of Exempt Distribution under National Instrument 45-106 Prospectus and Registration Exemptions* ("CSA Guidance Notice 45-308")

Paragraph 4 of CSA Guidance Notice 45-308 states:

> *4. Failing to include a complete list of purchasers in the F1*
>
> *Some F1s filed by issuers or underwriters only identified purchasers from the jurisdiction in which the F1 was filed, even though the distribution included purchasers from other jurisdictions. If distributions are made in more than one jurisdiction, the issuer or underwriter must complete a single F1 identifying all purchasers, including purchasers that reside in the jurisdiction and those that do not, and file that report in each of the jurisdictions in which the distribution is made (see Instruction 2 of the F1).*

We agree with the second sentence, in that, if a distribution is made in more than one jurisdiction, Form 45-106F1 should be filed in each jurisdiction in which the distribution is made. However, we do not agree that a single Form 45-106F1 identifying all purchasers, including purchasers that do not reside in the jurisdiction, should be mandatory as we do not believe that issuers should be required to disclose purchasers in one jurisdiction to a regulator in another jurisdiction. Rather, we respectfully propose that the filing of a single form be optional for the issuer.

Comments for OSC Staff: In addition to the guidance and instructions noted above, we have the following comments with respect to OSC Staff Notice 45-709 *Tips for Filing Reports of Exempt Distribution* (the "**OSC Tips Notice**"). Paragraph 9 of the OSC Tips Notice states as follows:

> *Schedule 1 to Form F1 should include a complete list of purchasers under the distribution, including purchasers that reside in Ontario, purchasers that reside in other Canadian jurisdictions and purchasers that reside outside of Canada.*
>
> *If the distribution is made in more than one Canadian jurisdiction, the issuer or underwriter must complete a single Form F1 identifying all purchasers and file that report in each of the Canadian jurisdictions (other than BC) in which the*

> *distribution is made. As noted above, the issuer or underwriter must file a Form F6 with the BCSC.*

In our view, paragraph 1 above should state that Form 45-106F1 should include a complete list of purchasers under the distribution, including purchasers that reside in Ontario, "and purchasers that reside in other Canadian jurisdictions and purchasers that reside outside of Canada *where the distribution to such purchasers is a distribution in Ontario*." We submit that this is in line with Interpretation Note 1 which contemplates that a distribution by an Ontario or non-Ontario issuer *may be* a distribution in Ontario, but is not necessarily so.

We note in this respect that Interpretation Note 1 is referenced on the cover page of the OSC Tips Notice as a source for "additional guidance." We strongly suggest that Interpretation Note 1 be updated and clarified if it is to be relied upon as authority. The OSC Tips Notice also refers to *Crowe et. al v. Ontario Securities Commission*, for additional guidance as to when a distribution has occurred in Ontario. In our view, owing to the unique nature of the facts in *Crowe,* neither the OSC reasons nor the Divisional Court decision should be applicable to determining when a distribution to purchasers outside of Ontario is a distribution in Ontario, in the context of a private placement that is carried out as part of legitimate and *bona fide* capital raising activities. The Ontario Superior Court of Justice clearly limits the application of its finding, that the OSC had jurisdiction over distributions that occurred outside of the province, based on the facts at hand, citing the need to protect investors from unfair or fraudulent activities. Moreover, *Crowe* involved the contravention of, among other things, the registration requirement of the *Securities Act* (Ontario). The majority of the decision and analysis is devoted to the issue of when the registration requirement in the province is triggered, including the relevant connecting factors for determining when there is an "act in furtherance of a trade" to trigger such requirement. In our view, neither the OSC's reasons nor the Divisional Court's decision clarify whether the OSC has jurisdiction over the distributions to investors outside of Ontario in the context of legitimate private placements that do not involve fraud or other harmful activity.

c. *Schedule 1: Insider*

We note that Schedule 1 to Form 45-106F1, as proposed to be amended, requires the filer to "indicate if the purchaser is an insider (i) of the issuer". The definition of "insider" under Canadian securities laws refers to reporting issuers and does not include a counterpart for non-reporting issuers. We further note that this information is not relevant for non-reporting issuers. Given that Form 45-106F1 is to be filed by reporting and non-reporting issuers, alike, we would ask that this requirement be amended accordingly.

d. *Schedule 1: Exemption Relied On*

We note that Schedule 1 to Form 45-106F1, as proposed to be amended, requires the filer to state all paragraphs of the exemption under which a purchaser qualifies. While we recognize that more than one paragraph may apply to a

particular purchaser, we do not believe that the additional costs associated with ensuring that a purchaser understands, reviews and confirms every paragraph that may apply would be justified by any anticipated benefit associated with the regulators having such additional information. Further, an investor may not wish to disclose every single paragraph applicable on the basis of privacy or other concerns.

e. ***Schedule 1: Instruction 1***

It is our view that Instruction 1 to Schedule 1 is not clear with respect to the type of information required about a trust company or registered adviser and the beneficial owner of the fully managed account. We also note that issuers may not know the identity of the ultimate beneficial owner of a fully managed account. We respectfully request that the CSA provide further clarification as to the type of information that is to be provided.

f. ***Electronic Filing***

Comments for OSC Staff: We have found that there are a number of technical issues relating to several of the embedded fields within the electronic web-based Form 45-106F1 which prevent the accurate disclosure of certain transactional information for certain common offerings where securities are not issued and/or priced in individual units and are denominated in currencies other than the Canadian dollar. As filers are required to certify as to the accuracy of the information in Form 45-106F1, these technical and structural deficiencies prevent the full and accurate disclosure of certain transactional details otherwise required to be disclosed in Form 45-106F1.

Specifically, we note that the electronic version of Form 45-106F1 (the "**Electronic Form**") is not an exact reproduction of Form 45-106F1 which permits the filer, when filed in physical format or electronically as a PDF, to accurately and completely disclose transactional information with specificity using alpha, numeric and hybrid descriptive and currency data required to be reported and to otherwise certify as to the same. As financial instruments and offering/pricing structures are the subject of innovation and evolving practices, narrowly tailored embedded fields that prevent alpha, numeric or hybrid descriptive entries will invariably fail to accommodate such scenarios.

We note that Ontario is currently the only Canadian jurisdiction that mandates the use of the Electronic Form. As such, for offerings where distributions are made in Ontario and other Canadian jurisdictions, filers are required to use the Electronic Form solely for the purpose of reporting Ontario distributions and to also prepare a standard Form 45-106F1 for filing in all other applicable Canadian jurisdictions. We believe this approach to be needlessly duplicative and will result in filers being subjected to increased compliance costs.

In light of the above, we would encourage the OSC to revise the Electronic Form to permit the input of a broader range of information if and when the Electronic Form is updated to reflect the Proposed Amendments.

D. Companion Policy to NI 45-106

a. Section 1.6 Registration business trigger for trading and advising

Section 1.6 of 45-106CP describes the triggers for registration under Canadian securities legislation. We submit that the triggers listed in 45-106CP should indicate that they apply only to the extent these activities take place in a Canadian jurisdiction.

b. Section 1.9 Responsibility for compliance and verifying purchaser status

Under the Proposed Amendments, Section 1.9 of 45-106CP states that "it will not be sufficient to accept standard representations in a subscription agreement or an initial beside a category on the Form 45-106F9 *Risk Acknowledgement Form for Individual Accredited Investors* unless the person relying on the exemption has taken reasonable steps to verify the representation." We respectfully submit that this statement in 45-106CP may be interpreted as questioning representations made in subscription agreements between commercial parties and gives rise to ambiguity. We further refer you to our comments above regarding reliance on subscription agreements found under the heading "Risk Acknowledgement Form". While we acknowledge that the issuer or registrant should satisfy itself that an exemption is clearly explained in a manner that can be understood by prospective investors, having done so, issuers and registrants should be entitled to rely on representations made by the investor that such investor fits within the requirements. We also note that investors may reasonably refuse to provide any additional requested information to an issuer on privacy grounds. In such scenario, an issuer or registrant may be forced to choose between an investment and breaching its own diligence policies.

The Proposed Amendments to Section 1.9 of 45-106CP also state that issuers should "[v]erify the purchaser meets the conditions of the exemption" and "gather information from the purchaser to confirm their status, before discussing the details of the investment". Given that this information is typically certified in a subscription agreement and, if implemented as contemplated in the Proposed Amendments, with respect to purchasers who are individuals, this information would also be included in a RAF to be executed at the same time or before the individual signs the purchase agreement, it is our view that this verification suggested by 45-106CP imposes an additional and onerous diligence obligation on issuers which we do not believe to be necessary or appropriate. As discussed above with respect to reliance on representations contained in a subscription agreement, issuers should be able to rely on certifications made by investors for this purpose. Further, if a dealer is involved in the distribution, we note that the dealer will have "know your client" and suitability obligations that will serve similar investor protection purposes. As such, we believe that there are sufficient investor protection measures in place that will achieve the same result as increased diligence requirements.

45-106CP also indicates that "the person relying on the exemption may take further steps or collect additional information depending on the circumstances". It is unclear to us to whom a "person relying on the exemption" is meant to refer (i.e. the issuer or the dealer). Further, it is unclear to us which "circumstances" may warrant additional diligence or the collection of additional information. We respectfully submit that issuers should be able to rely upon the information provided in a subscription agreement or a certificate or collected in an RAF when determining whether an investor who is an individual is an "accredited investor" for the purposes of NI 45-106 and issuers should not be required to take additional steps to subsequently verify this information. We also respectfully request that the CSA consider including further clarification in 45-106CP as to whether it is the issuer or the dealer who should bear any additional diligence or verification responsibilities.

Under the Proposed Amendments in Section 1.9 of 45-106CP, the CSA has also noted that "persons relying on an exemption that requires the purchaser to meet certain characteristics should", among other things:

> ***Establish policies and procedures*** *– A person using an employee, officer, director, agent, finder or other intermediary should establish policies and procedures to ensure these parties understand the exemptions, are able to describe them to potential purchasers and know what information and documentation they need to gather from potential purchasers to confirm the purchaser meets the conditions of the exemption.*

We question whether the above language suggests that issuers are required to conduct diligence on all dealers who are involved in a distribution to ensure that the dealer has such policies in place. We also question who "persons relying on an exemption" are (i.e., is 45-106CP referring to issuers or dealers?). We encourage the CSA to include additional clarification of these points in 45-106CP.

If issuers are required to conduct additional diligence with respect to the purchasers and dealers involved in the distribution, we submit that further guidance is required in 45-106CP with regard to how an issuer should request and maintain this type of information, particularly given the sensitive nature of this information (i.e. income tax returns, bank statements, investment statements, tax assessments or appraisal reports issued by independent third parties). Once again, we raise privacy concerns with issuers collecting and retaining information of this nature, particularly where such information is to be provided to the issuer and not to a registrant with whom an investor has a pre-existing relationship.

E. *Securities Act* (Ontario)

<u>Comments for OSC Staff</u>: Given the CSA's commitment to ensure that a harmonized and national approach continues to be taken with respect to prospectus exemptions, we question why certain exemptions found in NI 45-106, and in particular, the AI Exemption, are being moved from NI 45-106 to the *Securities Act* (Ontario). It is our view that the implementation of harmonized rules under 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 the CSA look to enhance the existing rules, we strongly encourage all regulators, including the Ontario Securities Commission, to continue to strive for greater harmonization at a national level and preserve what has been accomplished under NI 45-106. It is our belief that moving certain exemptions to the *Securities Act* (Ontario) only serves to complicate matters with no added value.

* * * * *

Thank you for the opportunity to comment on the Proposed Amendments. Please do not hesitate to contact any of the undersigned if you have any questions in this regard.

Regards,

Laura Levine,
on my own behalf and on behalf of

Alix d'Anglejan-Chatillon
Nicholas Badeen
Jeffrey Elliott
Ramandeep K. Grewal
Philip J. Henderson
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