



Via E-mail

May 28, 2014

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

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Dear Sir or Madam,

**Re: Request for Comment - Proposed Amendments to National Instrument 45-106
*Prospectus and Registration Exemptions***

This comment letter is being submitted on behalf of RBC Dominion Securities Inc., RBC Direct Investing Inc., RBC Philips, Hager & North Investment Counsel Inc. and RBC Global Asset Management Inc. (collectively, "RBC"). We are writing in response to the Canadian Securities Administrators' ("CSA") request for comment on the proposed amendments to National

Instrument 45-106 *Prospectus and Registration Exemptions* (“NI 45-106”) relating to the accredited investor and minimum amount investment prospectus exemptions.

General Comments

RBC is fully supportive of regulatory initiatives that promote investor protection while at the same time maintain a fair and equitable marketplace for industry participants. In recent years, the CSA has identified a number of potential concerns with the use of the minimum amount and accredited investor investment prospectus exemptions; specifically, the thresholds for minimum investment and the qualification criteria used to determine an accredited investor. We believe that the minimum amount and accredited investor exemptions are appropriate and should be available to both retail and institutional investors. While we recognize that the CSA does not propose to change the income test or asset thresholds in the accredited investor definition at this time, we continue to believe that a periodic review of asset thresholds is important to both investors and market participants.

We are also pleased that the Ontario Securities Commission is proposing to amend the definition of accredited investor to allow for fully managed accounts to purchase investment fund securities in Ontario. We believe that a fully harmonized and consistent set of requirements as it relates to the managed account category of the accredited investor exemption will reduce confusion for market participants.

We have outlined below our specific comments to the proposed amendments to the accredited investor and minimum amount exemptions. Further, we participated in the IIAC Working Group and support the comments raised in their letter related to the proposed amendments to NI-45-106.

Specific Comments

1. Accredited Investor Exemption – Risk Acknowledgement Form

We understand that the proposed amendments to the accredited investor exemption are to address concerns that some individual investors do not understand the risks associated with exempt market investments or that the individual may not qualify as an accredited investor. To address these concerns, the CSA is proposing that individual accredited investors complete and sign a new risk acknowledgement form, Form 45-106F9 – *Risk Acknowledgement Form for Individual Accredited Investors* (“45-106F9”). While we support the objectives of the proposed amendments, we believe that much of the information included on proposed Form 45-106F9 is already covered in the subscription agreements for exempt market products and we recommend that the CSA consider the potential duplication of information being provided to clients on the form related to the potential risks of investing in exempt market products..

Further, proposed Form 45-106F9 includes detailed instructions on the completion of the form. We note that the instructions require that the purchaser, issuer and salesperson (if any) must sign 2 copies of the form and that the salesperson must ensure that the purchaser and the issuer receive originally signed copies of Form 45-106F9. We question why the issuer of the securities should be required to sign Form 45-106F9. We believe that it should be sufficient that the salesperson, who would have the direct relationship with the investor and any related obligations relating to determining suitability, should be responsible for ensuring that the Form 45-106F9 contains appropriate information regarding the securities and issuer and for ensuring that the investor completes and signs the form. Unless the issuer also happens to be acting in a dual capacity as a dealer/issuer, we do not think the issuer should be a party to the form.

We also question the requirement that originally signed copies of Form 45-106F9 be provided given that there are other methods of communication, such as email or fax, available to meet the requirement related to signatures. As stated in the IIAC letter, the use of electronic signatures is

a widely recognized practice, and we believe that mandating the exchange of signed originals will cause undue delays in effecting some subscriptions in a timely manner.

We are also seeking clarification on the requirement outlined in Section 2.3(8), which stipulates that Form 45-106F9 be retained for a period of 8 years after the distribution. We believe that the requirement for Form 45-106F9 to be retained for 8 years is inconsistent with shorter retention requirements found in other legislation. For example, Section 11.6 in National Instrument 31-103 – *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (“NI-31-103”) indicates that records are to be maintained for a period of 7 years from the date the record was created. We believe that NI 45-106 should be consistent with the retention period in NI 31-103 since different retention periods may increase the risk of non-compliance.

Further, we note that the “Acknowledgement of risk” portion of Form 45-106F9 contains the following acknowledgement from the investor: “I acknowledge that this is a risky investment.” We note that many securities that are offered to investors in reliance on the accredited investor exemption are no riskier than those offered pursuant to a prospectus. Indeed, many prospectus-qualified securities are far riskier than exempt market securities. We would suggest modifying this statement to state: “I acknowledge that this *may* be a risky investment.”

Lastly, we are also seeking clarification from the CSA on the application of the Form 45-106F9 to clients who transact in exempt market products through a suitability-exempt firm (e.g. order-execution only).

2. Minimum Amount Investment Exemption

We do not object to the proposed amendments to the minimum amount exemption to limit the availability of the exemption to distributions to non-individuals.

3. Exempt Trade Reports

We note that the CSA is proposing to amend the reports for exempt trade distributions; specifically, the Form 45-106F1 and in BC the form 45-106F6. In addition, the CSA has also separately proposed two new reports of exempt distribution: Form 45-106F10 and Form 45-106F11, for use in varying jurisdictions. As a result, issuers would be required to use a combination of up to four reporting forms, depending on the exemption relied upon, the type of security issued and the jurisdictions involved. Further, the CSA has proposed to collect significantly more information in the reports of exempt distributions. The proposed filing process would be unduly burdensome to market participants. We are recommending that the CSA consider implementing one consistent form applicable for all jurisdictions to capture the required information, such as type of accredited investor and compensation, and to collect only the information strictly necessary, which in our view would simplify the filing process for market participants.

4. Companion Policy

The CSA is proposing additional guidance in the Companion Policy 45-106 Prospectus and Registration Exemptions (the “Companion Policy”) on the steps issuers should take to verify accredited investor status. Where a registrant is involved in the exempt market offering, the registrant is subject to stringent rules and regulations, such as know-your-client and know-your-product obligations. Further, a registrant has a responsibility to ensure that the potential purchaser qualifies as an accredited investor as part of their suitability and know-your-client obligations. In our view, if a registrant has made the determination that the purchaser qualifies as an accredited investor, we believe that it is not practical for an issuer to undertake additional steps to verify whether the purchaser meets the criteria for the exemption. To that end, we recommend that the Companion Policy be revised to clarify that an issuer can rely on a registrant’s determination that the purchaser qualifies as an accredited investor.

Thank you for providing us with the opportunity to provide comments. We would be pleased to discuss any of our comments further with you.

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