Chase ALTERNATIVES

June 18, 2014

The Secretary
Ontario Securities Commission
20 Queen Street West
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Dear Sirs and Madams:

Re: Proposed Prospectus Exemptions and Proposed Reports of Exempt Distribution in Ontario.

About Chase Alternatives

Chase Alternatives is a firm dedicated to assisting organizations involved with raising capital within the Canadian exempt market. The firm's mandate is to provide the necessary strategy and information to its clients to effectively **reduce their initial cost of capital**, whilst maintaining strict compliance and conservatism of regulation. I support your mandate of protecting investors from unfair, improper or fraudulent practices, while **equally** fostering fair and efficient capital markets.

It is because of my role with this firm that I have established a considerable number of relationships with Exempt Market Dealers ("EMDs") and product manufacturers across the country, and it is through those relationships that I have acquired a certain awareness to the effects of this proposed review. Understandably the exempt market industry encompasses many different product types, and therefore while the comments below are my own, they do reflect perceptions from conversations with many such entities specific to the retail side of the exempt market.

(Please note that I have only answered those questions applicable to my intent. Further, as this consultation coincides and relates to the CSA Proposed Amendments to National Instrument 45-106 ("NI 45-106"), I have attached such comments to this letter as Appendix A for relevant reference.)

SPECIFIC REQUEST FOR COMMENT – OM PROSPECTUS EXEMPTION

General

1. **We note that the existing OM Prospectus Exemption available in other CSA jurisdictions has not been frequently used by start-ups and small and medium-size enterprises ("SMEs"). Have we proposed changes that will encourage start-ups and**

SMEs to use the OM Prospectus Exemption? What else could we do to make the OM Prospectus Exemption a useful financing tool for start-ups and SMEs?

I must first contest your assumption that start-ups and SMEs are not frequently using the OM exemption in other jurisdictions. Yes, if you compare its use to the dollar amount of those who rely upon the Accredited Exemption, then I could understand your rationale, but those who commonly use the Accredited Exemption are typically placing significantly larger tranches than those who rely on the OM Exemption, therefore the dollar amounts would be considerably different. In addition, studies conducted by the Alberta Securities Commission ("ASC") Corporate Finance division indicated that approximately $824M was raised by Alberta-based Issuers in 2011 and 2012 alone. Such a number could indicate that SMEs in particular, *are* taking advantage of such exemption were it again, not compared to those who rely on the Accredited Exemption.

I would like to further add that these studies have been conducted in a post-economic downturn era where investor confidence was lower on the retail side, and thus, it is unfair to make the assumption that the OM Exemption was not widely used based on the reasons noted above.

This all said, and in answer to your question, encouraging start-ups and SMEs to 'continue' the use of the OM Exemption may be facilitated by ensuring that the initial cost of capital is kept to a minimum. The private market has long been declared an alternative means to capital; if the cost of entry becomes too great, this would deter such entities from seeking the benefits such exemptions could provide.

<u>Issuer Qualification Criteria</u>

2. **We have concerns with permitting non-reporting issuers to raise an unlimited amount of capital in reliance on the OM Prospectus Exemption. Should we impose a cap or limit on the amount that a non-reporting issuer can raise under the exemption? If so, what should that limit be and for what period of time? For example, should there be a "lifetime" limit or a limit for a specific period of time, such as a calendar year?**

Over the last few years, regulators have spent significant time and effort implementing specific regulation that would protect investors from issuers who took advantage of the OM Exemption in either a fraudulent or ignorant inexperienced capacity. **Why spend such time creating these protection mechanisms if you were simply then going to impose a cap of any form?**

In addition to this, and also keeping in mind our goal to reduce the initial cost of capital, were the issuer to have taken advantage of multiple opportunities within one fund, a greater capital requirement would be necessary. The purpose of placing multiple opportunities under one fund was to allow for further diversification under the specific asset type, and also to decrease their cost of capital by only creating one disclosure document that encompasses all three opportunities in detail. National Instrument 31-103 ("NI 31-103") ensures that a dealer is properly conducting adequate due diligence on the specific risks associated with this fund (Know Your Product –"KYP"). And, under CSA Notice 33-315, among others, proper suitability is being done by the registrant to ensure that such a fund was appropriate to the investor's portfolio.

To limit the ability of what can be raised could take away this diversification tool for investors, along with unnecessarily increasing the cost of capital, therefore one could surmise that imposing a cap would not be appropriate.

3. **What type of issuer is most likely to use the OM Prospectus Exemption to raise capital? Should we vary the requirements of the OM Prospectus Exemption to be different (for example, disclosure requirements) depending on the issuer's industry, such as real estate or mining?**

   Regulation imposed as recently as January of this year (CSA Staff Notice 31-336) would conceivably account for such a risk. Full disclosure of a specific asset type's 'business' is required in the current specified form of the OM under NI 45-106 F2. Altering, or making changes would only lead to additional legal fees being incurred by the issuer. Registrants are mandated under KYP requirements to ensure that the business strategy is fully disclosed in the OM provided, and anything material not included would be deemed a misrepresentation of the fund. My concern is that altering the existing specified form would only add to taking away the efficiencies already realized with this exemption, thus taking away from your mandate.

4. **We have identified certain concerns with the sale of real estate securities by non-reporting issuers in the exempt market. As phase two of the Exempt Market Review, we propose to develop tailored disclosure requirements for these types of issuers. Is this timing appropriate or should we consider including tailored disclosure requirements concurrently with the introduction of the OM Prospectus Exemption in Ontario?**

   (Please refer to the comment to question 3)

   Real Estate securities, like many other asset types, may contain inherent risk. To single out one such asset, and incur additional disclosure requirements would not be a universal approach to the private markets in general. Specifically, the disclosure already required within the OM has been often defined as prospectus 'light'. To add anything further would bring it to prospectus disclosure levels which again, take away from the efficiencies to the issuer of the private market, and unfortunately add to the cost of capital.

<u>Types of Securities</u>

5. **We are proposing to specify types of securities that may not be distributed under the OM Prospectus Exemption, rather than limit the distribution of securities to a defined group of permitted securities. Do you agree with this approach? Should we exclude other types of securities as well?**

   No. Again, existing regulation is in place to ensure that an investor is suitable to a specific investment. Should an issuer be able to increase the viability of their fund, and as well the potential upside, whether it be through tax efficiencies or structural benefit, why restrict them from using a complex structure? Exempt Market Dealers ("EMDs") are in place to ensure appropriate due diligence ("DD") has been done on all existing funds, and are able to ensure that the investors who involve themselves in a complex fund are appropriately suitable. Again my question to regulators would be, why spend such time, effort and

resource into adopting new regulation that accounts for this, only to cap or restrict it on a go-forward basis?

Offering Parameters

7. We have not proposed any limits on the length of time an OM offering can remain open. This aligns with the current OM Prospectus Exemption available in other jurisdictions. Should there be a limit on the offering period? How long does an OM distribution need to stay open? Is there a risk that "stale-dated" disclosure will be provided to investors?

No. One risk often looked at by EMDs in their review of a fund is the risk of 'not' being able to raise the capital in a sufficient amount of time, or, has the issuer strategized appropriate scenarios to mitigate such a risk? Were they to be restricted by how much time they have to raise the capital, you could inadvertently be placing the initial investors into a risky position should the fund not be able to raise sufficient funds to complete the project in the time specified.

I additionally contest the statement of 'Stale-dated disclosure', as it could not be considered a risk as any material change to the initial business plan must be updated within the OM while capital raising is occurring, otherwise it could be deemed a misrepresentation. Certain regulators within Canada have even hired individuals with the specific goal to *"Conduct reviews of offering memoranda documents to identify misrepresentations or misleading disclosure; ensuring the accompanying financial statements are in material compliance with IFRS; reviewing supporting documents such as agreements, cash flow forecasts and investor presentations as needed."*[1]

[1] Capital Market Analyst ASC Competition #2014.08EX

Registrants

9. Concerns have been raised about the role of unregistered finders in identifying investors of securities. Should we prohibit the payment of a commission or finder's fee to any person, other than a registered dealer, in connection with a distribution, as certain other jurisdictions have done? What role do finders play in the exempt market? What purposes do these commissions or fees serve and what are the risks associated with permitting them? If we restrict these commissions or fees, what impact would that have on capital raising?

In any scenario where an investor is involved, a registrant should also be present to ensure investor protections are upheld. This does not necessarily imply a need for a finder to become registered, nor should it restrict them from receiving a fee for service.

But let us also first look at the definition of finder and how it relates to the exempt market today. Initially in other areas of the capital markets, it was viewed as an individual who assisted issuers in the procurement of investors suitable to the specific investment. As registration requirements and thus, suitability requirements have been mandated across Canada, many of these 'finders' within the exempt industry focused instead on their relationship to the EMDs. At first, some of these individuals became registered to ensure appropriate levels of compliance, but then, competing dealers were not as interested in working with such entities and were less inclined to allow any interaction with their own dealing representatives ("DRs"), therefore taking away the efficiency of such a position.

Issuers who wish to take advantage of this alternative means to capital must be financially responsible with start-up costs. Unfortunately, as there is little access to information for such issuers made available, they are left at the mercy of service providers such as legal counsel, where I have unfortunately seen such fees inflate to gross proportions on what is responsible to the fund.

Once the necessary disclosure documents are procured, the issuer then must determine which dealer will assist with the capital raise. This in itself can be costly and time consuming thus taking away from the issuer's focus of the business plan itself (Example: The DD process of many such dealers requires a significant amount of back and forth communication between issuer and dealer. Further, once such EMD accepts the fund, the issuer then must ensure appropriate training of the product to the EMDs DRs). Many such issuers have hired individuals in-house simply to facilitate this which unfortunately again, leads to an increase to the cost of capital.

This all said, a new class of 'finder' has been identified as to assisting such an issuer in this role at a more efficient rate from bringing someone on in-house, thus alleviating a significant amount of time in creating the necessary relationships to secure funding. I agree that such an individual should not be 'investor-facing' at any time, rather simply be in the role to assist in the creation of relationships and the management of training on applicable DRs for the purpose of KYP.

Investor Qualifications – Definition of an Eligible Investor

10. We have proposed changing the $400,000 net asset test for individual eligible investors so that the value of the individual's primary residence is excluded, and the threshold is reduced to $250,000. We have concerns that permitting individuals to include the value of their primary residence in determining net assets may result in investors qualifying as eligible investors based on the relatively illiquid value of their home. This may put these investors at risk, particularly if they do not have other assets. Do you agree with excluding the value of the investor's primary residence from the net asset test? Do you agree with lowering the threshold as proposed?

While I respect the Commissions position on wishing to raise the threshold in which one qualifies as an eligible investor, I must again defer to existing regulation in place to ensure such an investor is suitable to the investment. During the global economic downturn, it was witnessed that certain individuals who wished to take advantage of low interest rates, and the current value of real estate, opted to lessen their exposure to the instabilities of the public markets and use their savings instead to upgrade their primary residence. It was done on the assumption of a family investment. Should, in this scenario, the investor be discounted then from an eligible investor, simply as they felt the safest investment outside the turmoil of what the public markets experienced, was in their primary residence? Were an investor be approved for financing, or in some cases be able to pay off a residence in excess of $400,000, it would appear that they have the sophistication and know-how of what the risks are associated with a private investment. And finally, discounting the primary residence in the net asset test due to its illiquid nature, would also then discount other illiquid investments (such as exempt market product). An investment, no matter what its nature, should be included in determining the required 'status' of an investor.

11. An investor may qualify as an eligible investor by obtaining advice from an eligibility advisor that is a registered investment dealer (a member of the Investment Industry Regulatory Organization of Canada). Is this an appropriate basis for an investor to qualify as an eligible investor? Should the category of registrants qualified to act as an eligibility advisor be expanded to include EMDs?

For an investor that does not meet the requirements of an eligible investor, they are then currently limited to a cap of $10,000 on a unlimited number of investments (thus ensuring proper diversification). Due to the nature of the private markets, the eligibility advisory, whether a member of IIROC, or even a lawyer or accountant, would then have to conduct a thorough review of the product in order to ensure proper suitability. Allowing a member of IIROC, who may not have knowledge of the specific business to ascertain such suitability, could not be deemed as efficient. Further, it could possibly incur further cost to the issuer, thereby increasing cost of capital, should the IIROC representative wish to incur a DD fee on behalf of potentially one investor.

I agree that the category of registrants qualified to act as an eligibility advisor should be expanded to include EMDs. DRs are required to undergo extensive training to ensure product awareness (KYP), and to ensure they are properly ascertaining suitability of their investors. Further, they must then undergo the scrutiny of the CCO whose responsibility is to

ensure that the DR conducted appropriate suitability assessment. Having undergone the appropriate training, and falling under specific regulation that accounts for the investor's protection, the EMD would be the more appropriate option as an eligibility advisor.

Investment Limits

12. Do you support the proposed investment limits on the amounts that individual investors can invest under the OM Prospectus Exemption? In our view, limits on both eligible and non-eligible investors are appropriate to limit the amount of money that retail investors invest in the exempt market. Are the proposed investment limits appropriate?

Vehemently No. Evidence would support that this actually works against investor protections, and will only add to the initial cost of capital, thereby taking away from fostering a fair and efficient capital market.

(Please refer to the comment in Appendix A, Question 2)

Point of Sale Disclosure

13. Current OM disclosure requirements do not contain specific requirements for blind pool issuers. Would blind pool issuers use the OM Prospectus Exemption? Would disclosure specific to a blind pool offering be useful to investors?

Many blind pool issuers take advantage of the OM Exemption. And as EMDs are required to perform heightened measures of KYP whenever faced with a fund that operates a blind pool, significant information is then required by the EMD to support the overall business model. Many such funds, specifically in real estate, require funds so as to act quickly in a cash position based on current market conditions. Such issuers would need to identify detailed statistics on the specific type of real estate (ie. Land banking, commercial, residential, etc.), and also portray a significant track record to account for the nature of the blind pool. Current disclosure found within an OM as identified within NI 45-106 F2 should be kept harmonized within all issuers.

14. We are not considering any significant changes to the OM form at this time. However, we are aware that many OMs are lengthy, prospectus-like documents. Are there other tools we could use at this time (short of redesigning the form) to encourage OMs to be drafted in a manner that is clear and concise?

Respectfully, the same tools or suggestions could be requested by those who submit a prospectus. As it has been widely commented on, many investors will not take the time to review the OM. Those same investors will also then not take the time to review a Prospectus. This said, a Prospectus is reviewed in detail by qualified individuals at the applicable Commission. The OM however is also required by many notices, but specifically CSA Staff Notice 33-315 to be reviewed by qualified individuals within an EMD. Further, based on CSA Staff Notice 31-336, a registrant is deemed off-side should they rely upon a third-party DD report, and therefore must ensure a full understanding of the specified disclosure found within the OM to ensure proper assessment of suitability.

Further, and as noted above, regulators are also employing qualified individuals to specifically focus on conducting random reviews of the OM, along with determining any potential misrepresentation *(Please refer to the sourced reference from the comment to Question 7 under Offering Parameters).*

Advertising and Marketing Materials

15. In our view any marketing materials used by issuers relying on the OM Prospectus Exemption should be consistent with the disclosure in the OM. We have proposed requiring that marketing materials be incorporated by reference into the OM (with the result that liability would attach to the marketing materials). Do you agree with this requirement?

I do agree with this proposal. Investors should be making their investment decisions based on information disclosed to them in the OM. As a result, all marketing materials should be derived from information contained within the OM which provides investors the necessary statutory rights from misrepresentation.

Ongoing Information Available to Investors

16. Do you support requiring some form of ongoing disclosure for issuers that have used the OM Prospectus Exemption, such as the proposed requirement for annual financial statements? In our view, this type of disclosure will provide a level of accountability. Should the annual financial statements be audited over a certain threshold amount? If the aggregate amount raised is $500,000 or less, is a review of financial statements adequate?

(Please refer to the comment from Appendix A, Question 8)

17. We have proposed that non-reporting issuers that use the OM Prospectus Exemption must notify security holders of certain specified events, within 10 days of the occurrence of the event. We consider these events to be significant matters that security holders should be notified of. Do you agree with the list of events?

I agree with this proposal, however would suggest clarity be provided on 'certain specified events', as in its current form it could be deemed as 'subjective to interpretation'. For example, should the issuer close on $10M in funds, which is up from $8M in funds on the previous close, would this be considered a 'specified event' (certain legal counsel acting on behalf of an issuer have indicated yes)?

18. Is there other disclosure that would also be useful to investors on an ongoing basis?

As it is required by dealers to provide regular statements to investors (NI 31-103 Part 14-14), it would not be unreasonable to expect quarterly or bi-annual updates by the issuer.

19. We propose requiring that non-reporting issuers that use the OM Prospectus Exemption must continue to provide the specified ongoing disclosure to investors until the issuer either becomes a reporting issuer or the issuer ceases to carry on business. Do you agree that a non-reporting issuer should continue to provide ongoing

disclosure until either of these events occurs? Are there other events that would warrant expiration of the disclosure requirements?

(Please refer to the comment from question 18 above)

Reporting of Distribution

20. We believe that it is important to obtain additional information to assist in monitoring compliance with and use of the OM Prospectus Exemption. Form 45-106F11 would require disclosure of the category of "eligible investor" that each investor falls under. This additional information is provided in a confidential schedule to Form 45-106F11 and would not appear on the public record. Do you agree that collecting information would be useful and appropriate?

I agree with this proposal. The private markets are in need of more information to better calculate trends and market conditions. I would additionally suggest a summary of the information (keeping specific details in confidence as proposed) be made available to industry participants via the Ontario Security Commission's ("OSCs") Bulletin, Chapter 8.

SPECIFIC REQUEST FOR COMMENT – FFBA PROSPECTUS EXEMPTION

Types of Securities

1. Do you agree with our proposal to limit the types of securities that can be distributed under the FFBA Prospectus Exemption to preclude novel and complex securities? Do you agree with the proposed list of permitted securities?

While I dislike limits of a specific security with regards to other exemptions, I will agree to its limitations under this exemption so that the investor is provided with proper suitability assessment when investing in a complex security rather than being advised by a close friend.

Offering Parameters

2. Should there be an overall limit on the amount of capital that can be raised by an issuer under the FFBA Prospectus Exemption?

(Please refer to the comment under 'Specific Request for Comment – OM Exemption, Issuer Qualification Criteria', Question 2)

Investor Qualifications

3. Do you agree with the revised guidance in sections 2.7 and 2.8 of 45-106CP regarding the meaning of "close personal friend" and "close business associate"? Is there other guidance that could be provided regarding the meaning of these terms?

As there is a proposed Risk Acknowledgement to supplement this exemption, along with a restriction of payable commissions, I do not believe any change is necessary.

Investment Limits

4. Should there be limits on the size of each investment made by an individual under the FFBA Prospectus Exemption or an annual limit on the amount that can be invested?

No. As it is proposed that no commissions may be made payable for those who wish to take advantage of this exemption, there is no reason to cap the limit. In fact, the more raised by the fund under this exemption would greatly decrease the expected cost of capital (less commissions payable), and also in ensuring the fund has the capital requirements in the time frame required per its directives. To limit the amount of capital raised per investor will also increase the number of investors involved (thus increasing cost of capital), and does not fit well with the mandate of creating an efficient capital market.

In addition, some issuers will be exceedingly well connected and could very well raise the majority of financing required based on such relationships. To limit such access could in fact, jeopardize the investors brought in under this exemption due to a potential inability to raise funds within an efficient period of time of the fund's objectives.

Risk Acknowledgement Form

5. Does the use of a risk acknowledgement form that is required to be signed by both the investor and the person at the issuer with whom the investor has the relationship mitigate against potential risks associated with improper reliance on the FFBA Prospectus Exemption?

I am in full support of the implementation of a risk acknowledgement form. Over the past years, whenever in conversation with someone from the commission, I am reminded consistently that regulators often receive calls from investors regarding concerns in their investment decisions. By mandating an increased use of this document within the private markets, you are allowing more accountability on behalf of the investor before undertaking this type of investment.

Reporting of Distribution

6. We believe it is important to obtain additional information in Form 45-106F11 to assist in monitoring compliance with and use of the FFBA Prospectus Exemption. Form 45-106F11 would require disclosure of the person at the issuer with whom the investor has a relationship. This additional information is provided in a schedule to Form 45-106F11 that does not appear on the public record. Do you agree that collecting this information would be useful and appropriate?

(Please refer to the comment under 'Specific Request for Comment – OM Exemption, Reporting of Distribution', Question 20)

SPECIFIC REQUEST FOR COMMENT – CROWDFUNDING PROSPECTUS EXEMPTION AND CROWDFUNDING PORTAL REQUIREMENTS

Crowdfunding Prospectus Exemption

Issuer Qualification Criteria

1. **Should the availability of the Crowdfunding Prospectus Exemption be restricted to non-reporting issuers?**

   I agree with the Commission's support of allowing a Reporting Issuer the opportunity to take advantage of this exemption. An issuer, whether it be a reporting issuer or not, that complies with all requirements mandated in current regulation, should be allowed to then take advantage of such exemption, and should not be discriminated against simply due to its status as a reporting issuer.

2. **Is the proposed exclusion of real estate issuers that are not reporting issuers appropriate?**

   Absolutely not. While I understand that the OSCs goal is to focus on Start-ups and SMEs, it is also their mandate to foster a **fair** and efficient capital market. There are indeed Start-ups or SMEs that could be classified under the 'real estate' asset type, along with certain real estate opportunities that could provide economic growth, potential employment, etc., which is ultimately our goal. In addition, restricting a specific asset type sets a potentially dangerous precedent. (i.e. which type would be next?)

3. **The Crowdfunding Prospectus Exemption would require that a majority of the issuer's directors be resident in Canada. One of the key objectives of our crowdfunding initiative is to facilitate capital raising for Canadian issuers. We also think this requirement would reduce the risk to investors. Would this requirement be appropriate and consistent with these objectives?**

   While I am not in support of such restrictions under other noted exemptions, I am in support of it under the crowdfunding exemption. As other jurisdictions wait for such exemptions to be made available to them, they could in-turn focus on Canada, thus competing with our own participants.

Offering Parameters

4. **The Crowdfunding Prospectus Exemption would impose a $1.5 million limit on the amount that can be raised under the exemption by the issuer, an affiliate of the issuer, and an issuer engaged in a common enterprise with the issuer or with an affiliate of the issuer, during the period commencing 12 months prior to the issuer's current offering. Is $1.5 million an appropriate limit? Should amounts raised by an affiliate of the issuer or an issuer engaged in a common enterprise with the issuer or with an affiliate of the issuer be subject to the limit? Is the 12 month period prior to the**

issuer's current offering an appropriate period of time to which the limit should apply?

While I am greatly opposed to certain caps based on arguments already provided herein, I feel that this specific exemption is poised for popularity with the growth of 'online' reliance society in general has grown accustomed to. Should an issuer wish to raise additional funds, they may then rely on the OM exemption within the same portal (which I believe should be an EMD), thus not overly limiting them, rather encouraging further disclosure requirements for those seeking funding over $1.5 million.

Crowdfunding is a relatively new concept to Canada, and has seen success in other jurisdictions around the world. This said, I again re-iterate that it is still a relatively new concept in Canada, and thus protective measures should be put into place to ensure such concept does not target fraudulent activity. As noted above, crowdfunding is also growing exceedingly quickly in popularity, therefore the statistics reported in other jurisdictions can already be considered outdated, as they may not reflect current market trends.

As an added comment, I would also like to respectfully recommend that when conducting surveys on investors, that the OSC expand their options and use another company other then the Brondesbury Group. While I agree as to the quality in service that they provide, it could be potentially advantageous to review a study by another firm, and determine if the numbers perhaps differed (diversifying information sources).

Restrictions on Solicitation and Advertising

6. Are the proposed restrictions on general solicitation and advertising appropriate?

While I agree that the marketing materials used should be consistent with that of the business plan. I would not limit the issuer to simply one portal. In addition, I would not limit them from using certain 'teaser' documents (consistent with those filed with regulators and displayed on the portal) on social media. I understand that it is permitted to direct potential investors to a proposal they are offering on a certain portal, however I would like it clarified that the issuer could then use the link on the portal that directs investors to the term sheet, or other summary, including a video directly, as opposed to simply directing them to the site to 'look' up their opportunity. Crowdfunding in a sense, specifically on the subject of marketing, will become more aligned with use of social media, and therefore 'on-line' presence is important.

Investment Limits

7. The Crowdfunding Prospectus Exemption would prohibit an investor from investing more than $2,500 in a single investment under the exemption and more than $10,000 in total under the exemption in a calendar year. An accredited investor can invest an unlimited amount in an issuer under the AI Exemption. Should there be separate investment limits for accredited investors who invest through the portal?

Should an accredited investor take certain interest in a specific product, they should be able to invest whichever amount that is suitable to their investment objectives. Limiting an accredited investor again produces a precedent not ideal to the OSCs mandate.

(Please also refer to the comment under Specific Request for Comment – FFBA Prospectus Exemption, Question 4, paragraph 2).

Statutory or Contractual Rights in the Event of a Misrepresentation

8. The Crowdfunding Prospectus Exemption would require that, if a comparable right were not provided by the securities legislation of the jurisdiction in which the investor resides, the issuer must provide the investor with a contractual right of action for rescission or damages if there is a misrepresentation in any written or other materials made available to the investor (including video). Is this the appropriate standard of liability? What impact would this standard of liability have on the length and complexity of offering documents?

If an issuer makes a misrepresentation, then the investors should be provided with such comparable right to those relying on the OM exemption. I do not believe there would be any sufficient impact to the issuer to ensure this was in place on behalf of the investors, and therefore I agree such rights be offered to investors in the event of any misrepresentation made by the issuer.

Provision on Ongoing Disclosure

9. How should the disclosure documents best be made accessible to investors? To whom should the documents be made accessible?

Disclosure documents of any kind should be easily made accessible to investors. Aside from the portal on which the investor made the decision to invest, a copy of disclosure documents should also be mailed electronically to the investor upon initial closing.

10. Would it be appropriate to require that all non-reporting issuers provide financial statements that are either audited or reviewed by an independent public accounting firm? Are financial statements without this level of assurance adequate for investors? Would an audit or review be too costly for non-reporting issuers?

Taking into account my appreciation for the provision of financial statements, I also do not wish to threaten the viability of the fund itself by incurring such regulation that increases the cost of capital past a logical point. As such, I would propose limiting the need for such a requirement, and placing more importance on the disclosure provided.

11. The proposed financial threshold to determine whether financial statements are required to be audited is based on the amount of capital raised by the issuer and the amount it has expended. Are these appropriate parameters on which to base the financial reporting requirements? Is the dollar amount specified for each parameter appropriate?

In taking in these parameters, one could then also ask if it were appropriate to then limit the amount an independent auditing firm could then charge as ultimately, there is always a specific percentage budgeted in for cost of capital. Should this exceed the provided budget based on auditing firms increasing their fees to suit a new mandate, inevitable damage could then befall the investors due to the increase in cost of capital.

Other

12. Are there other requirements that should be imposed to protect investors?

A crowdfunding portal should be operated under a registered entity such as an EMD, so as to ensure proper KYP in the absence of KYC and Suitability Obligations.

Crowdfunding Portal Requirements

General Registrant Obligtions

13. The Crowdfunding Portal Requirements provide that portals will be subject to a minimum net capital requirement of $50,000 and a fidelity bond insurance requirement of at least $50,000. The fidelity bond is intended to protect against the loss of investor funds if, for example, a portal or any of its officers or directors breach the prohibitions on holding, managing, possessing or otherwise handling investor funds or securities. Are these proposed insurance and minimum net capital amounts appropriate?

(Please refer to the comment from Question 12 above)

Additional Portal Obligations

14. Do you think an international background check should be required to be performed by the portal on issuers, directors, executive officers, promoters and control persons to verify the qualifications, reputation and track record of the parties involved in the offering?

No. While I can appreciate the rationale, it is not inline with our goal of reducing the initial cost of capital. Should the portal fall under the stewardship of an EMD then responsibilities surrounding KYP would be met.

Prohibited Activities

15. The Crowdfunding Portal Requirements would allow portal fees to be paid in securities of the issuer so long as the portal's investment in the issuer does not exceed 10%. Is the investment threshold appropriate? In light of the potential conflicts of interest from the portal's ownership of an issuer, should portals be prohibited from receiving fees in the form of securities?

As it would lesson the overall cost of capital born by the investors within the fund, I would encourage such form of payment be made. As the portal will more then likely be party to multiple issuers looking for this arrangement, the apparent conflict is lessoned.

Other

17. Are there other requirements that should be imposed on portals to protect the interests of investors?

(Please refer to answer from Question 12)

SPECIFIC REQUEST FOR COMMENT – ACTIVITY FEES

1. **Are the proposed activity fees appropriate? Do they address the objectives and concerns by which we were guided?**

   The proposed fees are similar to what is already realized by Alberta issuers, therefore while I am respectful of the need for regulatory fees, I am in support of any such proposal that effectively reduces the cost of capital for the issuer.

2. **Should we consider any other activity fees for exempt market activity?**

   Respectfully, issuers looking to take advantage of the private markets are already inundated with a requirement for fees. Adding to the cost of capital ultimately affects the investors within the fund responsible for such fees. As a result, I would consider reducing fees where able.

SPECIFIC REQUEST FOR COMMENT – PROPOSED REPORTS

1. **Do the changes to the reporting requirements strike an appropriate balance between: (i) the benefits of the collecting information that will enhance our understanding of exempt market activity and as a result, facilitate more effective regulatory oversight of the exempt market and inform our decisions about regulatory changes to the exempt market, and (ii) the compliance burden that may result for issuers and underwriters?**

   I agree to the proposal, and to the proposed information requested.

   (Please also refer to the comment under Specific Request for Comment – OM Prospectus Exemption, Question 20).

Thank you for taking the time to read my comments. I am happy to discuss the contents of my submission at any time.

Sincerely,

signed ("Nancy Bacon")
Nancy Bacon
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APPENDIX A

Chase ALTERNATIVES

June 18, 2014

Alberta Securities Commission
Autorité des marchés financiers
Financial and Consumer Affairs Authority of Saskatchewan

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Dear Madams:

Re: CSA Proposed Amendments to National Instrument 45-106 ('NI 45-106') *Prospectus and Registration Exemptions* Relating to the Offering Memorandum ('OM') Exemption and in Alberta, New Brunswick and Saskatchewan, Reports of Exempt Distribution.

About Chase Alternatives

Chase Alternatives is a firm dedicated to assisting organizations involved with raising capital within the Canadian exempt market. The firm's mandate is to provide the necessary strategy and information to its clients to effectively **reduce their initial cost of capital**, whilst maintaining strict compliance and conservatism of regulation. I support your mandate of protecting investors from unfair, improper or fraudulent practices, while **equally** fostering fair and efficient capital markets.

It is because of my role with this firm that I have established a considerable number of relationships with Exempt Market Dealers ("EMDs") and product manufacturers across the country, and it is through those relationships that I have acquired a certain awareness to the effects of this proposed review. Understandably the exempt market industry encompasses many different product types, and therefore while the comments below are my own, they do reflect

perceptions from conversations with many such entities specific to the retail side of the exempt market.

(Please note that I have only answered those questions applicable to my intent. Further, as this consultation coincides and relates to the OSC Introduction of Proposed Prospectus Exemptions, I have attached such comments to this letter as Appendix A for relevant reference.)

1. **Under the current framework in Alberta, Québec and Saskatchewan, both individual and non-individual investors are subject to the $10,000 annual investment limit if they do not meet the definition of an eligible investor. Should non-individual investors, such as companies, be subject to the $10,000 limit if they do not qualify as an eligible investor? Please explain.**

   The rationale of such a limit is primarily to ensure an individual or non-individual be able to withstand financial loss, and additionally be in such a financial position that the illiquid nature of such investment not prove harmful. Let us then assume that an individual who has put forth the effort of incorporating an entity for the purpose of business is in a position to understand the effects of first of all 'financial loss', but also the nature of having capital locked in, which therefore 'could' warrant them eligible investor status.

   That all said, and in favour of existing rules, it also does not restrict the individual or non-individual's ability to properly diversify. They would be defined as having net financial assets less then $400,000, and per existing rules have the ability to invest in multiple investments in increments of $10,000 or less (i.e. they could invest in four such entities over a year, and thus have a conservative 10% allocation properly diversified into private markets thereby reducing their exposure to any instability of the public markets).

   I would like to make note however, that I am opposed to any such caps as identified below, although in this circumstance I am willing to agree to existing rules as investors in this category are still able to properly diversify into the private markets given this cap is currently 'per investment' rather than in a given year.

2. **Are there circumstances where it would be suitable for an individual eligible investor who is not an accredited investor and not eligible to invest under the FFBA exemption to invest more than $30,000 per year under the OM Exemption? If so, please describe them.**

   Again the conversation is surrounding investor protection, along with fostering a fair and efficient capital market. Let us look for a moment at the argument of 'protecting' an investor by invoking such a cap per year. (Have it noted that this cap is different from the existing $10,000 limit on non-eligible investors as those investors can make multiple investments over the period of a year should they wish to diversify out of the public markets due to correlated instability.) Industry has shown on a global scale a decrease in public allocation and an increase of private allocations. One could presume that this relates directly to an individual's access to information (among other reasons). In 1990, information relayed on public entities was done so via news mediums and relationships with industry professionals (i.e. a Stock Broker). In 2014, investors have significantly greater access via their own handheld devices, and it has proven on multiple occasions to be a detriment from those who 'emotionally' invest.

For example:

In 2013, the Associated Press's twitter account was hacked by what was believed to be Syrian hackers. A tweet was released indicating that President Obama had been hurt and that the White House had been compromised. The result was that in 3 minutes, the 'fake' tweet erased $136 Billion in equity market value.[1]

Whether it be Google alerts, or some other social medium, due to an individual's access to information, and ability to trade online rather then by telephone, has all but shown industry and investors alike the need to have a portion of their portfolio invested in some form of private entity to ensure investor protection via proper diversification.

To further this argument, when looking at professional portfolios managed by sophisticated wealth managers, you will note such increase in private investments in response to market movements .[2] Would you restrict such activity to an eligible investors whose goal is to decrease their risk?

Take into account the following scenario:

A single woman aged 39 who earns an income of $180,000 a year with net financial assets around $750,000. Given the current investor definitions, this woman would be classified as an eligible investor.

In the event of a global crisis, and given the proposed cap limits, this woman would be limited to allocating ***less then 5% of her portfolio*** *into the private markets, thereby limiting her diversification potential. This effectively increases her risk and is in direct contradiction to the mandate of the securities commission. This investor would have to then place a large portion of her portfolio into cash position, and perhaps even liquidate a portion of the portfolio to place into a direct real estate investment.*

A more efficient means to this solution, not to mention providing appropriate investor protections on her behalf would be to eliminate the need for such a cap, giving her ***the ability to properly diversify based on market conditions****, and instead regulate the registered entity responsible in ensuring that she is appropriately suitable to this investment.*

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[1]Financial Post http://business.financialpost.com/2013/04/23/dow-jones-plummets-then-recovers-after-fake-ap-tweet-of-explosions-at-the-white-house/

[2]Canadian Pension Plan http://www.cppib.com/en/what-we-do/private-investments-overview.html

Regulators have done an exceedingly good job in not only this consultation preparation, but also in collaboration with industry participants who are witness to the day-to-day. They have also spent considerable time and resources first implementing National Instrument 31-103 ('NI 31-103') (Registration Requirements, Exemptions and **Ongoing Registrant Obligations**), but also CSA Staff Notice 33-315 (Suitability Obligation and Know Your Product - "KYP"), and most recently CSA Staff Notice 31-336 (Guidance for Portfolio Managers, EMDs, and other registrants on Know your Client ("KYC"), KYP, and Suitability Obligations) among others, that clearly focus on investor protections via an appropriately registered individual whose responsibility is to again ensure proper suitability, KYC, and KYP. We have seen a significant shift in such investor protections, to cap them now would beg the question - **What was the point of taking that time, effort, and resource to create such suitability requirements if you planned a cap of any nature that could supersede such regulation?**

So, to properly address your question of the proposed arbitrary cap of $30,000, it should not matter which exemption the specific investor may rely upon, a cap per year is far more detrimental to the safety of their investment portfolio by limiting their ability to properly diversify based on current market conditions.

3. **Given the costs associated with doing so, how likely is it that an individual would create a corporation or other entity to circumvent the $30,000 cap?**

Given the nature of this question, one would surmise that there is a potential expectation that an individual perhaps would go through such lengths in order to properly protect themselves by providing such opportunity for diversification into private market.

Again, with your mandate in mind, I understand that from a regulators point of view, you are receiving on a regular basis complaints surrounding the exempt market. The industry has received significant reputational demise due to stories of issuers who were either too inexperienced to deal with a global economic downtown, or were simply fraudulent.

But with updated regulation this industry has also bolstered the attention of many large family offices, and institutions who recognize the advantages of lessening their exposure to the potential instability of the public markets. With much of the updated regulation, we have seen a subtle shift in its reputation, and again one would question the need to suggest a cap.

4. **Investors who do not qualify as eligible investors based on net income or net assets can qualify as eligible investors on the basis of advice from a registered investment dealer. In what circumstances do investors actually seek and receive advice from a registered investment dealer? Does this introduce any complications or difficulties?**

Perhaps, but again those individuals who do not qualify as an eligible investor have the ability to invest in more than $10,000 in a given year so long as it does not exceed such limit per investment.

(Please refer to the comment in the attached Appendix A, under 'Specific Comment for Request – OM Prospectus Exemption, Investor Qualifications – Definition of an Eligible Investor', Question 11)

5. **The eligible investor definition includes persons that have a net income of $75,000 and persons that have net assets of $400,000. These income and asset thresholds currently apply equally to individual and non-individual investors, such as companies.**
    a. Should the $75,000 income threshold only apply to individuals? If so, please explain.

       If such a threshold should exist, it should include both individual and non-individuals. The $75,000 income threshold is representative of an investor qualification and should not relate to the type of investor.

    b. Should the net asset amount exclude the value of the principal residence for individual investors? If so, should the $400,000 net asset threshold be lowered as a result?

       No. Existing definitions should be kept 'as-is'. Many people use their home as an investment into real estate.

       For Example:

       During the economic downtown, a family opted to sell their existing home and upgrade due to the value of real estate, along with access to lower interest rates. They liquidated existing investments for such an upgrade as it was considered an investment outside of the public markets. Should this family not then qualify as an eligible investor due to their investment choice in this scenario?

    c. Should pensions be included in the net asset test under the OM Exemption? Please provide the basis for your answer.

       Pensions, by nature are also an illiquid investment, but again are still an investment made by the individual similar to an illiquid investment made in the exempt market, therefore should qualify as a net asset.

6. **The FCAA would appreciate feedback on whether lawyers and public accountants should continue to be considered "eligibility advisers" in Saskatchewan for purposes of the OM Exemption? Please provide the basis for your opinion.**

While I can appreciate the rationale for an 'eligibility advisory', I do not feel as though all lawyers or accountants are qualified to determine the suitability of such investment for investors. A lawyer, specifically a securities lawyer, 'may' be able to determine any structural risk, but would not have the ability to advise on the suitability unless comparable hours were spent to those mandated with KYP. An accountant can determine any tax advantages (disadvantages), along with affordability, ability to withstand financial loss, but could not ascertain any structural risk (i.e. If the OM was not in specified form, the issuer could become cease traded thus affecting the investment of the investor).

Regulators have undergone significant effort in creating KYC and suitability requirements by a registrant, along with KYP (not to mention that all trades are then vetted by the Chief Compliance Officer ("CCO") for final approval, thus adding further layers of protection). With those elements in place, adding a step would appear unnecessary and overtly onerous to the investor, thus taking away from your mandate of efficiencies in our capital markets.

8. **Under the Proposed Amendments, issuers relying on the OM Exemption would be required to deliver annual financial statements until the issuer either becomes a reporting issuer or ceases to carry on business. Are there other situations when it would be appropriate to no longer require ongoing annual financial statements for such issuers? If so, please describe them.**

While it is a primary mandate of mine to reduce issuers initial cost of capital, I do in fact support the idea of an issuer providing audited financial statement until such time that fundraising is complete, and funds allocated.

Once funds have been deployed into a project, requiring additional audits create an unnecessary expense to the fund (and ultimately the investor). To further this comment, the current requirement under NI 45-106 F2 Section B, mandates an issuer incur an expensive audit on a bank account that typically only holds roughly $100. Industry has dubbed such a requirement the 'Zero Balance Audit'. Many would rather incur such a charge 12 months into fund raising as it provides investors with information on exactly how funds were deployed, and further ensures that there were not any misrepresentations in the OM, under Use of Proceeds.

In efforts of providing an efficient means of capital, I would propose eliminating the Zero Balance Audit and replacing it with an annual audit requirement up until the deployment of funds.

Further to this, regulators have additionally hired individuals specifically to *"Conduct reviews of offering memoranda documents to identify misrepresentations or misleading disclosure; ensuring the accompanying* ***financial statements*** *are in material compliance with IFRS; reviewing supporting documents such as agreements, cash flow forecasts and investor presentations as needed."*[3]

[3] Capital Market Analyst ASC Competition #2014.08EX

9. **How do issuers relying on the OM Exemption typically communicate with their security holders? Do they maintain websites?**

   Dealers are required under NI 31-103, Part 14-14, to provide regular statements to their investors for all investments they are involved in. Issuers will also typically forward along email updates, or maintain a website from my current understanding. Investors have shown that they prefer to see an online presence of issuers.

10. **Should issuers be permitted to cease providing annual financial statements to their security holders after proceeds of a distribution are fully spent? If so, is there a period of time after which it is reasonable to assume that the proceeds of a distribution under the OM Exemption will have been fully spent?**

    (Yes. Please refer to comment from Question 8.)

11. **Should non-individual investors (e.g., companies or trusts) be required to sign a risk acknowledgment form? Please explain.**

    Yes. Any investor that is undertaking an illiquid private investment should be made to acknowledge their understanding of such risks inherent with the investment, and sign a risk acknowledgement. Any investor relying on a prospectus exemption should be required to sign a document that makes certain they understand the risks involved with this type of product.

12. **Should "permitted clients", as defined in National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Obligations be required to sign a risk acknowledgement form? Please explain.**

    (Yes. Please refer to comment from question 11.)

13. **Should non-redeemable investment funds continue to be permitted to use the OM Exemption?**

    Yes. It should not be limited to one specific product type, as suitability requirements are in place to ensure it is appropriate to the investor.

Thank you for taking the time to read my comments. I am happy to discuss the contents of my submission at any time.

Sincerely,

signed ("Nancy Bacon")
Nancy Bacon
Managing Director
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