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The Secretary
Ontario Securities Commission
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Re: CSA Proposed Amendments Relating to the Offering Memorandum Exemption

Dear Madams:

We respectfully submit this comment letter in response to CSA Notice and Request for Comment (the "Notice") regarding proposed amendments (the "Proposed Amendments") to National Instrument 45-106 Prospectus and Registration Exemptions ("NI 45-106").

I am the President of Invico Capital Corporation ("Invico"), a Calgary based independent **registered** investment fund manager and portfolio manager with approximately $200 million of assets under management. Invico was founded in 2005 with an initial fund of $10 million and we have grown in the exempt market over the last nine years to where we are today. Our investment funds raise money through exempt market dealers, investment dealers (both independent and bank owned) as well as institutions and family offices. A material portion of our capital comes through eligible investors and the OM Exemption.

Please find below a number of comments on the Proposed Amendments. Defined terms which are not defined herein are given the same meaning as in the Notice.

Harmonization

The Notice states "…harmonized securities regulation continues to be a goal of the members of the CSA and we are therefore interested in public comment on both the relative merits of the different approaches to the OM Exemption and the extent to which harmonization needs to be a priority in this area of securities regulation." Notwithstanding the statement that harmonization is a goal of the CSA and the Proposed Amendments, industry and investors are again presented with a fractured landscape of rules that differ from one jurisdiction to another.

We are extremely troubled by the following jurisdictional variations in the application of the Proposed Amendments between New Brunswick and Ontario and the balance of the Participating Jurisdictions:

i. Investment Funds cannot utilize the OM Exemption in Ontario and New Brunswick;
ii. Ontario and New Brunswick will adopt a different definition of "eligible investor" which definition alters the net asset test for individuals and removes the net income test for non-individuals;
iii. In Ontario and New Brunswick an issuer that availed itself of the OM Exemption must provide notice of certain significant events to security holders, within 10 days of the occurrence; and
iv. Ontario and New Brunswick will require a different form of risk acknowledgement which will only be required to be obtained from individuals who are not "permitted clients".

If Harmonization is your goal then create a harmonized approach. The fractured approach above is not an example of harmonization. Furthermore, we fail to see how excluding investment funds from utilizing the OM Exemption makes any sense at all. An investment fund is managed by a registered Investment Fund Manager and in many cases a registered Portfolio Manager. A registered Investment Fund Manager has met the prescribed proficiency requirements and is subject to ongoing reporting obligations, including the submission of quarterly net asset value calculations for the investment funds it manages. We fail to see any benefit from excluding investment funds, in fact, we see the opposite. As a registered Investment Fund Manager we are better equipped to select investments, given our proficiency requirements, than non-registered businesses that would otherwise be entitled to rely upon the OM Exemption. The funds we manage invest solely in SMEs. We are not a large mutual fund that only acquires public positions. To prevent all investment funds from being able to reply on the OM Exemption is unfair and will in our case, restrict the flow of capital into SMEs.

We favor one consistent definition of "eligible investor" and one form of risk acknowledgement. It is discriminatory to think that an individual or a company in Ontario is different (or should be treated differently) than an individual or a company in Alberta. We believe the current definition of "eligible investor" and the current form of risk acknowledgement are sufficient given the "know your client" and "know your product" obligations that are incumbent upon all registrants. We would not be opposed to treating trades that are NOT processed through a registrant (with KYP, KYC and suitability obligations) differently. In addition, we do not understand why the Northwest Exemption has been maintained in light of the considerable cost and efforts expended to create a registered dealer framework in the exempt market. It is frustrating that the efforts of registrants are permitted to be circumvented in this manner.

We do favor additional disclosure to clients; however, feel that the benefit of that disclosure must be weighed against the cost of its implementation. As stated in the Notice, "The OM Exemption is an exemption designed to facilitate early stage and small business financing." Over regulation often cripples many early stage and small businesses. We saw this in 2010 with the implementation of 2013 when many small capital corporations simply left the business because they could not afford the costs associated with becoming a registrant. Having said that, we do believe that providing notice of certain significant events as listed in section 2.9(17.9) of the Proposed Amendments is beneficial to investors, and as such are in favor of the Proposed Amendment.

Annual Investment Limits

The Proposed Amendments contemplate annual investment limits for both eligible investors ($30,000) and non-eligible investors ($10,000). We believe the imposition of annual investment limits will negatively impact investors, issuers and registrants. Our comments are set out below.

NI 31-103 Investor Safeguards

In March of 2010 our registration regime was overhauled. We did away with the trade trigger and moved to a business trigger for registration. For the most part, if you are in the business of trading you are required to be registered. With registration came onerous, but worthwhile and meaningful, proficiency, operational and client relationship requirements, including but not limited to know your client and product obligations in conjunction with suitability determinations. It is of fundamental importance that a dealing representative ensure an investment is "suitable" for his or her client. This suitability determination is made by the dealing representative understanding the investment he or she is selling (KYP) in addition to the needs of the client (KYC). All of this is done with investments that the exempt market dealer has approved for distribution.

NI 31-103 was the right thing to do; heavily regulate the exempt market through operational and client relationship obligations. Placing an annual limit on how much an investor can invest massively undermines the foundation of NI 31-103 and moves to a simple "tick the box". The quote below from CSA Staff Notice 31-336 outlines what we believed the CSA's views were regarding "tick the box" type rules:

> "*A meaningful suitability assessment is required. Assessing suitability is more than a mechanical fact-finding or "tick the box" exercise. It requires meaningful dialogue with the client to obtain a solid understanding of the client's investment needs and objectives, and to explain how a proposed investment strategy is suitable for the client in light of the client's investment needs and objectives*."

Numerous registrants have spent hundreds of thousands of dollars to create, staff and effectively operate a regulated exempt market dealer in the post NI 31-103 era and the annual investment limits completely undermine that. The annual limits make no sense if a trade is run through a registrant whose dealing representatives have, among other things, undertaken a suitability determination. The "tick the box" approach also undermines the offering memorandum and the disclosure provided therein which is provided upon the premise that the additional disclosure is affording the investor the opportunity to make an informed investment decision. It is abundantly clear to us that the annual limit or cap is simply an attempt to limit loss to an arbitrary amount, which indicates no faith in the post NI 31-103 registration regime. We would like to see our exempt market develop under the framework imposed by NI 31-103. We are still early in the post NI 31-103 era. We would like to continue to see our industry develop under the framework of NI 31-103.

Annex B to the Notice indicates that "the ASC has received numerous complaints from investors that have invested significant amounts under the OM Exemption and incurred significant losses." What is unclear is whether those complaints were pre or post NI 31-

103 and whether or not they were trades run through a registered dealer. We have made inquiries in this regard but have not been provided with any meaningful data.

Treating all Eligible Investors the Same

The annual investment limits improperly treat all eligible investors the same. How is it appropriate to treat a 35-year old doctor with an annual income of $175,000 the same as a 65-year old widow with $76,000 of income and retirement on the horizon. The same argument holds true in respect of the wide scope of the asset test. Again, to impose an arbitrary $30,000 cap seems to make no sense at all. We feel the argument against treating all investors the same is compelling, clear and obvious. Again we would not be opposed to treating trades that are NOT processed through a registrant (with KYP, KYC and suitability obligations) differently.

Diversification

The annual limits suggested by the Proposed Amendments will act as a disincentive to compose a diversified investment portfolio or will make it cost prohibitive to do so. CSA Staff Notice 31-336, states that, "most CSA staff will consider investments (either individually or taken together with prior investments) in securities of a single issuer or group of related issuers that represent more than 10% of the investor's net financial assets as potentially raising suitability concerns due to concentration." With an annual investment limit of $30,000 a registrant would be required, in most cases, to compose a portfolio of numerous exempt products in order to achieve the goal of diversification. Assuming a client has little or no net financial assets, this would result in a minimum of ten different placements amongst ten unrelated issuers - $3,000 per ticket. This is simply not feasible. Diversification is also limited within the public/private allocations of an investor's portfolio. For example, an investor with $900,000 to invest (or a portfolio valued at $900,000) who does not meet the accredited investor test (or some other exemption) would only be allowed to allocate 3% of their portfolio to exempt securities. It is common knowledge and practice amongst portfolio manager's to compose portfolios containing both public and private (exempt) securities. What is happening here is that your rules are working against each other. The registration related rules are not working with the corporate finance related rules.

Enforcement

We are left with many more questions than answers when it comes to how the annual investment limits will be enforced. It appears as though it is up to the individual investor to monitor and confirm, assuming a trade is run through a registrant, its investment limits. It is not difficult for a single exempt market dealer to monitor the limits of its clients. However, the client can also deal with more than one exempt market dealer. As an issuer, we have significant concerns with the enforcement of the annual investment limits.

Marketing Materials

We are in agreement with the Proposed Amendments regarding the inclusion of marketing materials being incorporated by reference into the offering memorandum such that there is a

statutory liability for misrepresentation. Marketing materials are utilized widely in the exempt market and we, as a registrant, would welcome better policing of these materials.

Ongoing Annual Disclosure

We are in agreement with the Proposed Amendments regarding ongoing annual disclosure. All of our investment offerings provide annual audited financial statements within 120 days of the issuer's year end. Although costly, we believe providing audited financial statements will help achieve the goal of making issuers accountable to investors, in particular with respect to the use of proceeds

If you would like further elaboration on my comments, please feel free to contact me at jwbrooks@invicocapital.com. This submission is being made on behalf of Invico Capital Corporation.

Regards,

Signed *"Jason Brooks"*

Jason Brooks
President

CC:

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