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Re: Introduction of Proposed Prospectus Exemptions (the "Proposed Exemptions") and Proposed Reports of Exempt Distribution (the "Proposed ED Reports") in Ontario

The Investment Industry Association of Canada (the "IIAC" or the "Association") appreciates the opportunity to comment on the Proposed Exemptions and Proposed ED Reports.

The IIAC supports the OSC's stated objective of facilitating capital raising for issuers at different stages in their growth and business cycles, while maintaining an appropriate level of investor protection and regulatory oversight. We are, however, extremely concerned and disappointed that the Proposed Exemptions are not part of a coherent and coordinated CSA initiative to create a nationally harmonized prospectus exemption regime. As you are aware, on the same day that the OSC published the Proposed Exemptions, a number of other provinces, both on an individual and group basis issued similar, but not identical new and amended exemptions for comment.

The result is a confusing and complex patchwork of proposed and existing exemptions which are intended to achieve the same objectives, but do so in a manner which would potentially leave Canada with 4 different Offering Memorandum exemptions, 3 different Friends, Family and Business Associates exemptions, 2 different Existing Securityholder exemptions and 3 different Crowdfunding schemes. The complexity and inefficiency

introduced into the Canadian capital markets through this provincial approach cannot be justified and runs counter to the philosophy of creating efficient and effective Canadian markets. Issuers attempting to raise capital on a national basis (or even in more than one province) will be forced to navigate inconsistent and different criteria, notwithstanding that they may be using what appears to be the same exemption in various jurisdictions. This is not an approach which could in any way serve the issuers, investors or any other stakeholders in the Canadian capital market.

It is critical that the development and implementation of the Proposed Exemptions and Proposed ED Reports be undertaken in cooperation with the other Canadian jurisdictions to create a consistent exemption scheme is put in place across Canada. There are no fundamental differences between investors in different provinces that would justify the confusion and inefficiency of the conflicting exemptions.

With the proviso that the priority for the Proposed Exemptions and Proposed ED Reports is national harmonization, we provide the following suggestions in respect of the specific questions relating to the proposals.

Offering Memorandum Exemption (the "OM Exemption")

1) We note that the existing OM Prospectus Exemption available in other CSA jurisdictions has not been frequently used by start-ups and 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?

The OM Exemption that exists in other jurisdictions is not utilized due to the fact that there is not a significant cost savings in preparing an OM compared to a prospectus financing. Concerns about liability have led to an increase in due diligence, disclosure and legal review to prospectus-like levels. Given the marginal difference in costs, issuers will generally attempt to use another prospectus exemption where possible, or undertake a prospectus financing, which appeals to a much wider investor audience and does not have the restrictions inherent in the OM Exemption.

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?

The Association does not believe a cap on the amount of capital raised under this exemption is necessary where investment dealers are involved in the financing. Where

issuers are raising funds from non-eligible investors, a cap may be a useful investor protection tool.

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?

Given that the types of issuers using the OM Exemption would generally be start up or small issuers, there is no need for differentiation in the disclosure document. Differential disclosure requirements based on specific industry categories will add complexity with no additional benefits. However, much like prospectus disclosure requirements, required disclosure could be included.

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?

The disclosure required in the OM Exemption should be consistent among industries. If a special project for real-estate issuers is undertaken, guidelines of required disclosure should be developed.

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?

If a prospective investor is provided with sufficient disclosure to understand the nature of the offered security (including risks and unique features of the security), any security type should be available under the offering.

6) Specified derivatives and structured finance products cannot be distributed under the OM Prospectus Exemption. Should we exclude other types of securities in order to prevent complex and/or novel securities being sold without the full protections afforded by a prospectus?

The OM Exemption should remain open to all types of securities. Where more complex securities are involved in an offering, the disclosure (including risk disclosure) should be more robust. The parameters of the existing document allow for such fulsome disclosure, so there is no need to restrict the OM Exemption in this regard.

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?

There should not be a limit on the length of time an OM offering can remain open. Provided the disclosure is not out of date, there is no compelling reason to impose such a limit. Issuers should be reminded of the obligation to update disclosure for changes in any material facts.

8) Do you agree with our proposal to prohibit registrants that are "related" to the issuer (as defined in National Instrument 33-105 Underwriting Conflicts) from participating in an OM distribution? We have significant investor protection concerns about the activities of some EMDs that distribute securities of "related" issuers. How would this restriction affect the ability of start-ups and SMEs to raise capital?

There should not be a prohibition in respect of registrants that are related to the issuer. These circumstances should be dealt with through disclosure of conflicts and risk factors, rather than prohibition.

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?

Given that unregistered finders do not have expertise, regulatory obligations, or oversight, it is appropriate to restrict their activity in respect of the exempt market. There are significant investor protection concerns relating to the provision of unauthorized advice and the ability of regulators to oversee and regulate individuals participating in the market. Regulators should have the ability to regulate ALL participants in the market.

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?

IIAC members do not have a strong view on which asset test is more appropriate. The key criteria is that the asset test is consistent among jurisdictions with an OM Exemption.

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?

Given the regulatory obligations (KYC, KYP and Suitability) imposed on IIROC dealers, it is appropriate that an investor be able to be qualified as an eligible investor by obtaining advice from an IIROC dealer. This is a much stronger investor protection mechanism than an income or asset test, which are at best, proxies for ability to withstand loss and does not address suitability.

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?

The investment limits are appropriate in respect of non-eligible investors, and those who qualify as eligible investors using asset and income tests. As noted above, the asset and income tests are proxies for the investor's ability to withstand loss. Advice from an IIROC dealer takes into account the suitability of the investment for the investor in light of their total financial portfolio and the specific characteristics of the security being offered. As such, limits are not necessary, as the IIROC advisor and the client can determine what level of investment is appropriate.

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?

There is likely no need for a blind pool to use an OM exemption.

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?

As noted above, concerns about liability increase the level of disclosure in the OM document. The open ended form of the questions in the OM document allow for

significant disclosure, and as such, the maximum amount of disclosure is generally provided.

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?

Including the marketing materials by reference into the OM disclosure would add to the existing concerns about liability, which may further limit the use of the document.

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?

Adding ongoing disclosure requirements would increase costs and further reduce any cost advantage of the OM Exemption to undertaking a prospectus financing. The disclosure requirements must be consistent among all provinces with the OM exemption.

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?

Requiring non-reporting issuers to notify security holders of specified events within 10 days would increase the costs of using the OM exemption. Given that the issuers are non-reporting, it is unlikely there is an active market for the securities, which makes the 10 day disclosure an unnecessary and costly burden. It is critical that all disclosure requirements are consistent among jurisdictions with this exemption.

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

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?

See 17. above

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 this information would be useful and appropriate?

This information appears to be something that the commissions may wish to have in order to track use of the exemption. We question whether this information is available from the exchanges where listed issuers are involved. If so, it should only be required for non-listed issuers.

Friends Family and Business Associates Exemption (FFBA Exemption)

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?

The FFBA Exemption should not restrict the types of securities offered, however, a risk disclosure document should clearly state the nature of risks in respect of complex or novel securities.

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

There should be no overall limit on the amount of capital that can be raised under this exemption.

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?

Members did not express strong views on this issue.

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?

There should not be limits on the size of investments made by individual investors under the FFBA Exemption.

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?

Given the lack of a disclosure document, and possible abuse of this exemption, the risk acknowledgment form may be a useful investor protection tool. The form should be consistent among all jurisdictions.

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?

This question is best answered by the regulators in respect of how they will use the information.

Existing Security Holder Exemption

1) Do you agree with allowing any issuer listed on the TSX, TSXV and CSE to use the Existing Security Holder Prospectus Exemption?

The IIAC agrees that this is appropriate. The eligible issuers must be consistent in respect of this exemption across all jurisdictions.

2) Do you agree that the offer must be made to all security holders and on a pro rata basis? Do you agree that these conditions support the fair treatment of all security holders?

This provision should be consistent with the exemption in all jurisdictions, which currently does not require pro-rata distribution.

3) Do you agree that it is not necessary to differentiate between a security holder that bought securities in the secondary market one day before the announcement of the offering and a security holder that bought the securities some longer period before the announcement of the offering?

This provision should be consistent with the exemption in all jurisdictions, which does not differentiate on the basis of when the securityholder purchased the securities in the secondary market.

4) Should securities distributed under the Existing Security Holder Prospectus Exemption be freely tradeable?

This provision should be consistent with the exemption in all jurisdictions, and with all other prospectus exemptions.

Crowdfunding Exemption

While we support the Commissions' goals of assisting small companies in raising capital, the IIAC has very serious concerns about the Crowdfunding exemption, as well as the Start-Up Crowdfunding exemption as proposed by certain other jurisdictions. Although we understand the OSC is not proposing a Start-Up Crowdfunding exemption at this time, we believe the Crowdfunding framework in general has serious flaws and raise significant investor protection concerns. The lack of investor suitability thresholds, accountable intermediaries, due diligence, and client review, stand in direct conflict with recently enacted regulations such as the Client Relationship Model, and the IIROC proposals for underwriting due diligence. These initiatives are designed to ensure investments have been adequately reviewed, fulsome information is available, the appropriateness for the client has been thoroughly considered and safeguards are in place to prevent extreme and inappropriate investor risk. The lack of such safeguards in the proposed Crowdfunding exemption results in a skewed risk proposal for potential investors.

One of the primary problems with both the Crowdfunding and the Start-Up exemptions is the lack of expertise, accountability and oversight of the funding portals through which the investments must be purchased.

The regulation bars existing registrants from facilitating the use of the exemption. This is wholly inconsistent with investor protection, as such registrants have expertise and are subject to regulatory accountability in respect of how exemptions should be utilized, the proper screening of investors and administration of the documentation and details regarding securities issuance. Rather than permitting existing registrants to leverage this knowledge and experience, under the Crowdfunding and Start-Up exemptions, individuals from outside of the industry with no background, educational requirements, proficiency standards or experience are invited to administer these exemptions for investors that are not required to meet any standards relating to knowledge, experience, or ability to withstand loss.

With existing registrants barred from participating, we are concerned about who may be involved in setting up these portals. It seems likely that portals may be run by individuals with an adequate amount of technology expertise to set up the online framework for the portal, but no industry experience. Given the lack of regulatory scrutiny of the portal operators, we also foresee that this framework will attract problematic individuals who may be interested in exploiting investors. These individuals

may include those who currently operate on the outskirts of the industry, and have elected not to be registered, or have questionable regulatory history. Placing the most vulnerable investors in the hands of persons without experience, expertise, regulatory responsibilities or meaningful oversight will certainly lead to investors making inappropriate investments in the best case, and outright abuse and fraud in the worst case.

In addition, it is likely that potential problems will arise in respect of the administrative procedures and documentation requirements connected with an equity financing. This will become apparent when an issuer has reached the stage where it is a reporting issuer, and has obligations and requirements relating to an expanded shareholder base, including significant regulatory obligations. It is unlikely that the operator of a portal, without any background in the industry, will have the knowledge, experience and resources available to navigate the regulatory obligations that come with funding a reporting issuer.

The Crowdfunding exemption will not only have a detrimental effect on investors, and eventually, as people lose their money, investor confidence, it also has the potential to erode the business of small fully registered investment dealers operating in the small capital space. With financing limits of $1.5 million per year, and availability of the exemption to reporting issuers, certain of these transactions may include ones that would otherwise be conducted by registered dealers. Not only will further damage the small dealer community, it will potentially limits growth opportunities for small issuers. Registered dealers not only have an obligation to protect investors, they also take a long term view in respect of supporting the issuers to help them grow. Portals have no such obligations or incentives to the long term health of an issuer.

The creation of an exemption that encroaches on business already conducted by registrants creates a further, lower level of an already unlevel playing field. Investors would be subject to 3, possibly 4 (if the Start-Up exemption is approved) possible types of intermediaries with different responsibilities and regulatory requirements. This further fractionalizes the industry and makes it more complicated for participants and investors to understand.

It is clear that there are currently significant challenges for small companies attempting to raise capital in Canada. However, it is not appropriate to try to improve capital raising conditions by lowering standards to levels where investor losses are certain, as a result of inadequate regulation, portal inexperience and potential fraud. The ultimate outcome of this financing framework will be an erosion of investor confidence in the entire market, as many of the investors in crowdfunded issuers will not understand the difference between investing with a reputable firm that is subject to strict investor protection regulations, and through buyer-beware portals that will facilitate crowdfunding.

We note that in the US, crowdfunding portals will be required to register with FINRA. Although the proposed registration standard is not as high as a broker-dealer standard, it ensures a certain level of oversight. While we recognize the Crowdfunding proposal calls for provincial registration of portals, we question whether the commissions have the expertise and resources available to provide the high degree of oversight and monitoring that will be required to ensure compliance with the regulations.

Although the IIAC is not supportive of the Crowdfunding or Start-Up proposals, if the commissions believe these measures are necessary to facilitate capital raising, we recommend that the bar be raised in respect of the portal requirements. At a minimum, background checks and due diligence training should also be required for principals involved in portals. This would help ensure that at least some potentially problematic individuals are not participating in the business where vulnerable investors are involved. Oversight of the portals and financings conducted through them is extremely important to avoid non-compliance and abuse. Without close scrutiny by regulators, it would be easy to abuse the limitations or commit fraud. For instance individuals could create a number of seemingly unrelated issuers and use the Crowdfunding exemptions to funnel the capital raised into one enterprise (legitimate or not) through one or several portals. Without close oversight on the principals of both the portals and the issuers, organized crime or other parties would find it easy to take advantage of the wide scope of the exemptions to take advantage of unsuspecting investors.

Without the proper due diligence experience, portal operators may not have the skills required to detect issues that indicate that inappropriate activity is taking place. Although it is critical for commissions to have a robust monitoring program to review financings and individuals involved in crowdfunding, it is also important that that those involved in the process provide the first line of defence against fraud. An unregistered individual with no experience is not a strong line of defence.

One way to increase the compliance and decrease the chances of fraud perpetrated using the Crowdfunding and Start-Up exemptions is to permit existing registrants to operate portals. Permitting existing registrants to operate portals under a separate registration category would inject a higher level of expertise into the process, and minimize the risk of non-compliance and fraud. It would also help ensure that the business and operations side of the portal financing will be properly conducted. This will prevent problems with the administration relating to documentation and processes surrounding securities issuances. We are concerned about how inexperienced portal operators will manage the processes relating to the issuance of securities and certificates issued under the Crowdfunding and Start-Up exemptions. In particular, if these issuers are, or will become reporting issuers or trade on stock exchanges, improperly issued securities can cause significant problems.

Commissions have the obligation to protect investors and to maintain efficient markets. The IIAC believes the Crowdfunding and Start-Up exemptions as currently proposed do not achieve either of these objectives. The proposed exemptions are inconsistent with the current regulatory emphasis on investor protection, which has resulted in burdensome regulation that in some cases threatens the survival of small dealers who are those best suited to assist startup issuers.

Activity Fees

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

The OSC is best placed to determine the appropriateness of the proposed activity fees. See comment below to ensure that the proposed fees are sufficient to cover the costs and expenses of the enhanced compliance and monitoring.

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

The activity fees proposed appear to be adequate at the present time. However, we recommend that the OSC closely monitor the time and resources spent monitoring the Exempt Market against fees raised to ensure that the Exempt Market participants are paying their fair share of the costs of the OSC.

Thank you for considering our comments. If you have any questions, please do not hesitate to contact me.

Yours sincerely,

Susan Copland