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The Secretary
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Dear Sirs / Mesdames:

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

Introduction

Portfolio Strategies Corporation is a Calgary-based dealer that is a member of the Mutual Fund Dealers Association of Canada and registered as a mutual fund dealer and exempt market dealer in Alberta, British Columbia, Saskatchewan, Manitoba, and Ontario.

We are submitting this letter in response to the concurrent proposals in different jurisdictions to amend the offering memorandum exemption in section 2.9 of National Instrument 45-106 *Prospectus and Registration Exemptions* ("NI 45-106"). We appreciate the opportunity to provide comments and commend the Ontario Securities Commission for considering adoption of an offering memorandum ("OM") exemption. We have several concerns with the specifics of the proposals that we believe need to be addressed.

Concerns

Lack of Harmonization

Despite the proposed amendments, there will still be considerable lack of harmonization in the OM exemption between different jurisdictions which creates a number of negative results. The

inter-jurisdictional differences increase the cost and complexity of compliance systems for both issuers and dealers who must ensure that they are complying with requirements that vary based on each client's residence jurisdiction, which in turn increases the cost of compliance for both dealers and issuers and thereby increases the cost of capital for issuers. The lack of harmonization – which appears to be largely arbitrary – and the ensuing increased costs is at odds with provincial governments' and securities regulatory authorities' ("SRA") public statements of intentions to be sensitive to the cost of regulation.

We recommend that all jurisdictions uniformly adopt the form of OM exemption set out in either subsection 2.9(1) or 2.9(2) of the proposed amendments.

Annual Limits on Investment

The justification offered for limiting each eligible investor to investing no more than $30,000 in total across all issuers under the OM exemption is that the investments may not be suitable. We do not believe that there is a sound policy reason to adopt that limitation when investors are purchasing through registered dealers. Further, as outlined below, it will be extremely difficult to monitor thereby imposing undue compliance costs on dealers.

In 2009 the SRAs created the exempt market dealer ("EMD") registration category and imposed substantially the same requirements on EMDs as exist for other dealers. In particular, EMDs are required to conduct due diligence on products, understand key information about clients, and ensure that recommendations are suitable for clients based on each client's circumstances. The proposed annual limit on investment is inconsistent with those duties and we believe that it is not an appropriate manner in which to address suitability concerns. We recommend instead that if the SRAs have concerns about the suitability of exempt product recommendations it would be more efficient to address the concerns directly through the normal dealer compliance oversight audits rather than indirectly by applying a broad but unfocussed limitation which will inevitably prevent suitable recommendations to, and suitable investments by, clients.

The proposed arbitrary limits are also problematic given the disparity between the thresholds to be an eligible investor and an accredited investor. For example, the proposed annual limit makes little sense for an investor whose net worth approaches $5 million (the threshold for an individual to be an accredited investor based on net worth) for whom a $30,000 investment could be as little as 0.6% of the investor's net worth. Clearly, an investment of a fraction of a percent of an individual's net worth should not raise any regulatory concerns.

Dealers will at best have limited ability to monitor whether clients have, in fact, invested under the OM exemption during the previous 12 months since a client may deal with multiple dealers or may invest directly with issuers. Dealers will have to rely entirely on the client's representations about whether the client has reached the limit. It is clear from comment letters from investors that many do not agree with the limit. Trying to ensure compliance with annual limits will impose costs on dealers that will inevitably be passed on to clients, divert resources from more substantive compliance work such as ensuring suitability, and limit issuers' access to capital under the OM exemption.

We believe that the proposed $30,000 annual limit is inconsistent with the EMD registration requirements adopted in 2009 and is an inefficient manner in which to address the concerns identified. We therefore recommend no annual limit for eligible investors under the OM exemption either overall or per-issuer when investments are made through a registered dealer, and that SRAs should instead monitor and rely on dealers' compliance with their suitability obligations.

Registration "Opt Out" by Issuers

The proposed changes will not eradicate the large exempt market failures that have grabbed headlines in recent years: those investments were made directly with issuers and issuers will still be able to bypass EMDs and investment dealers that perform due diligence and suitability assessments. Rather, issuers will still be able to advertise and sell directly to the public as they have in the past without investors receiving the benefit of independent due diligence and suitability assessments. We do believe that an annual limit on the amount that may be invested in an issuer or in a group of related issuers when the investment is not made through a registered dealer is appropriate and consistent with the goal of investor protection.

Investment Funds

No rationale was provided for the proposal for Ontario and New Brunswick to prohibit all investment funds from relying on the OM exemption. Other jurisdictions either have no restrictions on investment funds relying on the OM exemption or allow non-redeemable investment funds to use the OM exemption. One of the asset classes that will be particularly affected by the prohibition is flow-through limited partnerships, which offer tax relief to investors, provide vital capital to Canada's junior natural resource sector, and reduce the risks associated with investing in a single issuer.

In the absence of any rationale, we believe that it is inappropriate to prohibit non-redeemable investment funds from relying on the OM exemption and recommend that if Ontario and New Brunswick do not otherwise harmonize with the other jurisdictions, the exclusion in proposed subparagraph 2.9(2.2)(e)(ii) should be amended to allow non-redeemable investment funds to rely on the OM exemption.

Northwest Exemption

In the jurisdictions that have adopted the "northwest exemption" unregistered firms and individuals will continue to be able to engage in the business of dealing in securities sold under prospectus exemptions without having to conduct due diligence and suitability assessments. We do not believe that there is a sound public policy basis to maintain the northwest exemption and believe that it should be repealed.

Definition of "Eligible Investor"

The proposed definition of "eligible investor" for Ontario and New Brunswick excludes the value of an individual's primary residence but does not exclude the mortgage or other debt related to the individual's primary residence. We believe that that approach is illogical and that Ontario and New Brunswick should instead harmonize with the other jurisdictions by adopting

the existing definition in NI 45-106 of “eligible investor”. As a second-best alternative we recommend that the mortgage or other debt related to the individual’s primary residence should be specifically excluded from the calculation of the individual’s net assets.

Conclusion

We believe that the proposed adoption by the Ontario Securities Commission of the OM exemption is a positive step forward but that adopting annual limits for eligible investors on investments under the OM exemption would be a significant step backward. We believe that the lack of harmonization between jurisdictions and lack of consistency with previous regulatory initiatives, particularly the registration requirement for EMDs, must be addressed before any changes to the OM exemption are adopted.

Please contact us if you have any questions or would like elaboration on any of our comments.

Yours truly,

(signed)

Mark S. Kent, CFA
President & CEO

Yours truly,

(signed)

Kenneth Parker, CA
Vice President, Compliance & Finance