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VIA EMAIL

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The Secretary
Ontario Securities Commission
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Re: OSC Notice and Request for Comment -- Proposed Amendments to National Instrument 45-106 *Prospectus and Registration Exemptions* and Companion Policy 45-106CP *Prospectus and Registration Exemptions*, Proposed Amendments to OSC Rule 45-501 *Ontario Prospectus and Registration Exemptions*, proposed Multilateral Instrument 45-108 *Crowdfunding* and Companion Policy 45-108CP *Crowdfunding*, and Proposed Form 45-106F10 *Report of Exempt Distribution for Investment Fund Issuers (Alberta, New Brunswick, Ontario and Saskatchewan)* and Form 45-106F11 *Report of Exempt Distribution For Issuers Other than Investment Funds (Alberta, New Brunswick, Ontario and Saskatchewan)*

Portland Investment Counsel Inc. ("PIC") is pleased to have the opportunity to submit comments regarding OSC Notice and Request for Comment - Proposed Amendments to National Instrument 45-106 *Prospectus and Registration Exemptions and* Companion Policy 45-106CP *Prospectus and Registration Exemptions*, Proposed Amendments to OSC Rule 45-501 *Ontario Prospectus and Registration Exemptions*, proposed Multilateral Instrument 45-108 *Crowdfunding* and Companion Policy 45-108CP *Crowdfunding*, and Proposed Form 45-106F10 *Report of Exempt Distribution for Investment Fund Issuers (Alberta, New Brunswick, Ontario and Saskatchewan)* and Form 45-106F11 *Report of Exempt Distribution For Issuers Other than Investment Funds (Alberta, New Brunswick, Ontario and Saskatchewan)* (the "Proposed Amendments").

As background, PIC is an investment management firm registered as an investment fund manager, portfolio manager, exempt market dealer and mutual fund dealer in various jurisdictions across Canada. Our mission is to democratize opportunities for wealth creation. For more information about PIC and our mandate, please visit our website at www.portlandic.com. It is with our mission in mind, that we congratulate the OSC on its efforts to work towards

improving access to capital for issuers as well as improving access to opportunities for investors that have typically been reserved for institutional and ultra high net worth investors. This being said, we believe there is still work to be done in this area.

One area of concern is that the OM Prospectus Exemption proposed will now drive Canada into having 4 different versions of the same exemption:

- British Columbia version – (BC, NS and NL)
- Alberta version – (MB, NWT, NU, PEI and YK)
- Modified Alberta version (QC, AB and SK)
- Ontario version (ON and NB)

This means increased confusion and complication, and more coordination than ever will be required, as well as more room for error. We do not think it is either feasible or desirable to fragment the OM Prospectus Exemption more than it already is. We recommend the OSC reconsider its proposal and either work collaboratively with the other provinces to achieve harmonization for this exemption or fully adopt an existing OM Prospectus Exemption that is already available and in use.

We are also surprised that the Ontario version of the OM Prospectus Exemption is not more in line with the version available in British Columbia given the commitment of both provinces towards establishing a cooperative securities regulator. It would appear that the OSC is furthering its policy development without regard to this important national commitment.

Within the Proposed Amendments, the OSC has asked for comments on specific questions relating to the OM Prospectus Exemption, FFBA Prospectus Exemption, Existing Security Holder Prospectus Exemption, Crowdfunding Prospectus Exemption and Crowdfunding Portal Requirements, Proposed Reports and Consequential Amendments. Based on PIC's business model, we are providing comments on specific questions outlined regarding the OM Prospectus Exemption, Proposed Reports and Consequential Amendments. Below we have outlined the questions in bold followed by PIC's comments.

SPECIFIC REQUESTS 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 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?**

   It is our opinion that if the OM Prospectus Exemption is made available to investment funds, investment funds may in turn help and support SMEs. The OM Prospectus Exemption allows investors who do not meet the accredited investor definition to invest in the exempt market. As these investors are not accredited, they cannot necessarily make as large of an investment as those who are accredited. This means that a start-up or SME that wants to raise capital through the OM Prospectus Exemption would potentially need to deal with more investors

than if they raise capital though the Accredited Investor or Minimum Amount Prospectus Exemptions. An increase in the number of investors would add to the administration of the start-up or SME. Start-ups and SMEs may prefer and benefit by having an investment fund collect capital from multiple investors and the investment fund would in turn invest in the start-up or SME so that the Start-up or SME would have fewer investors. Investment Fund Managers have the infrastructure to deal with many investors whereas Start-up or SMEs do not.

In addition, it is our opinion that by making the OM Prospectus Exemption available to investment funds, this will not undermine the regulatory regime that has been put into place for retail mutual funds offered under a simplified prospectus. PIC is an IFM for investment funds that are offered under a simplified prospectus and for investment funds that are offered under an offering memorandum. The investment objectives and strategies of the investment funds offered under an offering memorandum have a different mandate and, in our opinion, help complement an investor's investment portfolio. Therefore, we believe that investment funds should be qualified for distribution under the OM Prospectus Exemption.

Issuer qualification criteria

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?**

   It is our opinion that if an issuer is an investment fund or private equity fund, there should not be a cap or limit on the amount that can be raised. The larger an investment fund or private equity fund, the lower the operating costs are which enhances the return to the investor. In addition to lower operating costs, more capital raised means that more capital that can be invested in other issuers including SMEs.

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?**

   It is our opinion that there may be a benefit to varying the requirements based on the issuer type. Investment funds must comply with National Instrument 81-106 *Investment Fund Continuous Disclosure* and the Investment Fund Managers who issue the investment funds must comply with National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*. As there is already an existing regulatory environment in which the issuers operate, we would hope that the requirements would be harmonized to avoid administrative confusion and complexity.

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?

We have no comment.

Types of securities

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?**

   We agree that complex or novel securities such as specified derivatives and structured finance products may be difficult for investors to understand. It is our opinion that an investment in specified derivatives and structured finance products should be acceptable if the securities are held within an investment fund or discretionary managed account with a registered portfolio manager with the proficiencies to trade in such securities. Accordingly, it is our opinion that investment funds be qualified for distribution under the OM Prospectus Exemption to allow investors access to a variety of investment opportunities, including complex or novel securities, while having a registrant with the proficiencies to make investment decisions regarding complex or novel securities.

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?**

   It is our opinion that an investment in any security would be acceptable if the securities were held within an investment fund or discretionary managed account with a registered portfolio manager with the proficiencies to trade in such securities. Accordingly, it is our opinion that investment funds be qualified for distribution under the OM Prospectus Exemption to allow investors access to a variety of investment opportunities, including complex or novel securities, while having a registrant with the proficiencies to make investment decisions regarding complex or novel securities.

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?**

   It is our opinion that there should not be a limit on the offering period and agree with the harmonization with the other jurisdictions. Form 45-106 F2 *Offering Memorandum for Non-Qualifying Issuers* requires financial statements, which form part of the offering memorandum, to be updated when financial statements are updated. We would suggest that it would be appropriate for issuers to update any relevant changes to their offering

memorandum at the time they update the financial statements. This would provide investors with recent information for issuers who wish to distribute securities on a continuous basis.

Registrants

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?

We note that no other jurisdiction has the prohibition of related issuer distributions. In the interest of harmonization to avoid administrative confusion and complexity, we do not agree with the proposal the prohibit registrants that are related to the issuer from participating in an OM distribution.

In addition, while we note that the OSC has some investor protection concerns about the activities of certain EMDs that distribute securities of "related" issuers we point out that within the context of the larger financial services industry, related distribution/issuer business models flourish and benefit the investing public. To the point, several business organizations focus exclusively on distributing proprietary product both within the public and exempt market. Related product distribution is especially important within the exempt market because traditionally the more senior distribution houses and financial institutions have vacated that market segment making it more difficult to raise capital for Start-ups and SMEs, and other investment vehicles. The OSC is to be congratulated in recognizing that this capital raising vacuum exists, however prohibiting the use of an OM distribution will negatively impact capital raising efforts as well as limit investment opportunities to the retail public.

The concern related to the inherent conflict of interest and certain activities of some EMD's is appropriate and there are a number of adequate safeguards currently in use within other segments of the financial services industry which would be used address these issues.

An outright prohibition does not recognize the significant work the OSC has already done in the exempt market through its communication and education of EMDs as to their obligations and requirements under 31-103 *Registration Requirement, Exemptions and Ongoing Registrant Obligations* specifically in the areas of "Know your Product", "Know Your Client", and Suitability obligations.

Conflict management can be addressed through a variety of techniques currently employed within the financial markets industry and include:

1. educating/enforcing application of suitability,
2. continuing education requirements for registrants,
3. having documented policies and procedures that address KYC/KYP and conflicts of interest management,
4. client disclosures/acknowledgements (*i.e.*, the relationship disclosure documents)
5. independent product reviews by third parties,

6. specific categorization of the relationship such as "principal distributor" (*i.e.*, manufacturer/distributor associated with offering documents),
7. expansion of rights of rescission/withdrawals, and
8. categorization of the transaction as "solicited/not solicited".

Among the most effective tool used for conflict management is client disclosures/ acknowledgements. Effective disclosures ensure that the client is fully aware of the conflict prior to a transaction. At the recent Private Capital Markets Association conference, the OSC indicated that they were concerned that conflict disclosure may have the unintended consequence of increasing the level of trust a client may grant to the dealing representative/issuer. While this may or may not be the case, we respectfully suggest that each participant in the investment industry has a role in ensuring financial goals are attained, and a key element to that success is when the investor is knowledgeable and educated on what they are investing in, what the conflicts are and what to expect from the process. Conflict disclosure has been successful in other segments of the investment industry and it is reasonable to assume that it would be as equally successful in the exempt market.

The prohibition would also impede on Start-ups and SMEs and investment vehicles abilities to raise capital as within the exempt market, it can be difficult to have a product sold by a third party. Many IIROC dealers require historical performance and minimum assets under management before they will consider adding a product to their shelf. When looking at EMDs to distributed third party products, generally EMD firms either distribute only proprietary products or they require a formal due diligence review. If an EMD only sells proprietary product, an unrelated issuer would not be able to have their product distributed by that EMD. If an EMD does sell third party products, they usually require a formal due diligence review by either a related party to the EMD or a third party. These reviews are costly and to get access to different distribution streams an issuer may have to have pay for two different due diligence reviews.

An outright prohibition of a related issuer OM Prospectus distribution would stifle product innovation and unduly hamper investment options for investors.

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?

We would suggest that the arrangement associated with a finder could be considered a referral agent under National Instrument 31-103 *Registration Requirement, Exemptions and Ongoing Registrant Obligations*. Where such an arrangement exists with a registrant, disclosure to the client is required which includes the nature of the referral arrangement, the roles of the parties involved and the compensation paid to the referee. We consider it a positive scenario when the distribution of securities occurs and a registrant is involved. In these scenarios, the investor has someone with the proficiency and obligation to assess

suitability and to know the product in addition to knowing the client involved with the distribution. We would recommend that commission or finder's fees paid to person other than a registered dealer be limited to when a referral arrangement is in place with a registrant.

Investor qualifications – definition of 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 we understand the concern with including a primary residence with the net asset test, we do have concerns with having a different eligible investor test in multiple jurisdictions and the administrative confusion and complexity this brings.

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?

We agree that an investor should qualify as an eligible investor when they obtain advice from a registered investment dealer. We also believe that this should be expanded to include EMDs. EMDs have the proficiency to provide advice to investors and similar to a registered investment dealer, they are required to know their client, know the product and assess suitability.

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?

In the interest of harmonization to avoid administrative confusion and complexity, we note the divergence from the Alberta model regarding the investment limits for both eligible and non-eligible investors that are individuals. We believe it will be difficult to ensure the investor caps are not breached and of more concern, where there is a breach, what can be done to enforce the breach (particularly, in a locked-in fund situation). In our view, a better approach would be to have a cap on the issuer versus the investor.

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?

We have no comment.

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?

We have no comment.

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?

We note that no other jurisdiction has the requirement to incorporate by reference marketing material in an offering memorandum. In the interest of harmonization to avoid administrative confusion and complexity, we do not agree with this requirement. While we understand the desire to ensure marketing materials are consistent with the offering memorandum, we do not agree with this requirement.

Marketing material is meant to summarize and provide additional background to the potential or existing investor. If marketing material were to be incorporated by reference, issuers may choose to not provide marketing material. This would make it more difficult to attract investors, may inhibit the investor from learning more about their [potential] investment and concerns by issuers that by summarizing, rewording or adding information they may be exposing themselves to interpretation issues.

It is not unrealistic to expect that marketing material would be created and even updated after the offering memorandum is issued. It would become administratively burdensome for issuers to have to send updated marketing material to the regulators.

We note that that incorporating marketing material in offering documentation is not required for investment funds. Similar to the mutual fund world, the regulators could review marketing material when they review issuers.

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?

We do support ongoing disclosure for issuers as well as the introduction of a limit for the requirement of audited financial statements. Due to the cost of audited financial statements, it is our opinion that the threshold should be increased to an amount, such as $2,000,000, whereby the cost of an audit would help ensure administrative costs are not punitive to both the start-up or SME and ultimately, the investor.

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?

We have no comments.

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

We have no comment.

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?

We have no comment.

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 this information would be useful and appropriate?

While we understand the need to understand the exempt market we believe that the information being requested may not help achieve this goal. In the interest of harmonization to avoid administrative confusion and complexity, we note that there will be multiple forms required depending on what jurisdictions distribution of securities are occurring. In our opinion, it is important for the OSC to work with the CSA to create harmonization.

In addition, some information is not necessarily made available to issuers such as individuals email address or age of investor. Some investors either do not have an email address or do not wish to provide their email address and receive electronic communications. Most investor databases store date of birth, not the age of investor. Providing an age range would be costly and administratively burdensome.

We would like to better understand what information the OSC is looking for under "Other Information" and "Description of Terms (where applicable)".

SPECIFIC REQUESTS FOR COMMENT – ACTIVITY FEES

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

   We have no concerns with the fee and the objectives with the fees but do question the need for increased reporting for investment funds. This could quadruple the costs incurred by investment funds which would increase the operating cost of the investment fund and negatively impact investors through fund expenses.

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

   It is our opinion that no additional fees should be levied.

SPECIFIC REQUESTS FOR COMMENT – PROPOSED REPORTS

1. **Do the changes to the reporting requirements strike an appropriate balance between: (i) the benefits of 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?**

   In our view, the Proposed Reports fail to strike an appropriate balance between the benefits of collecting additional information and the resulting compliance burden on issuers and underwriters.

   The introduction of Form 45-106F10 *Report of Exempt Distribution For Investment Fund Issuers (Alberta, New Brunswick, Ontario and Saskatchewan)* ("F10") means that investment fund managers will now need to complete three different forms of Report of Exempt Distribution, which imposes a significant, additional compliance burden.

   For Canadian-based investment fund managers, the additional administrative burden of the Proposed Reports and the added costs of filing more frequently will act as a competitive disadvantage. Investment fund managers may be incented to offer fewer funds in order to keep administrative burdens at a manageable level. This will likely result in decreased competition among fund companies and less choice for Canadian investors. Consequently, this will lead to reduced access to the exempt market for issuers and investors alike. This is not in the best interests of Canadian investors, particularly where investors are continually seeking to diversify their portfolios and to find opportunities for improved performance. Investors who invest in investment funds that are offered in the exempt market do so because they are deliberately seeking alternatives to 'plain vanilla' public mutual funds or ETFs.

   The introduction of the proposed Form 45-106F10 and volume of additional information requested is likely to act as (i) an additional disincentive for investment funds that are

currently distributed in the exempt market to continue to do business in Canada, and (ii) a barrier to entry for new investment funds.

For these reasons and those set out below, Form 45-106F10 is problematic.

a) Lack of harmonization

The harmonization of reporting requirements for investment funds is of paramount importance. The Proposed Amendments will require reporting through the use of multiple forms, depending on the exemption relied and jurisdictions involved. The introduction of the F10 will require an investment fund to file different information about exempt distributions of its securities with regulators in Ontario, Alberta, Saskatchewan and New Brunswick (Form 45-106F10 for investment funds and Form 45-106F11 for all other issuers), and in a different format, from that provided to all other jurisdictions. In British Columbia, Form 45-106F6 will be required.

We urge the OSC to work with the CSA to harmonize the reporting so that all of the needs of each jurisdiction can be met by relying on <u>one form</u> with <u>one filing method</u>.

b) Content requirements

The Proposed Amendments state that the objectives for the reports are to "enhance our understanding of exempt market activity", "facilitate more effective regulatory oversight", and "inform our decisions about regulatory changes". In our view, the information requested in the proposed Form 45-106F10 is not appropriate nor necessary to achieve these stated objectives. Instead, the OSC could more efficiently monitor exempt market activity by:

- Harmonizing the reporting requirements across Canada and streamlining the reporting process for investment funds that issue securities on a continuous basis;
- Collecting documents that investment fund managers already produce and make available to investors in the ordinary course of their businesses and in accordance with local jurisdiction requirements (i.e., audited annual fund financial statements denominated in the fund's currency); and
- Information/dollar amounts should be provided in the investment fund's currency in order to reduce the risks associated with converting values to Canadian dollars.

Finally, we note that public funds generally don't disclose information about purchasers to the regulators, so we query why investment funds distributed in the exempt market should be required to do so. For example, we do not see any benefit to requiring the age range of the purchaser as contemplated in Schedule 1 to Form 45-106F10. Programming changes would be required to calculate this information as only an investor's date of birth is collected to facilitate tax reporting. This will add to the cost and complexity of reporting for issuers. We believe that it is sufficient for regulators to require investment fund managers to confirm which exemptions they have relied on in distributing securities to investors.

c) Duplicating existing information

Many of the sections in Form 45-106F10, such as Items 2, 7 and 8, require detailed information about the fund and investment fund manager that, we believe, is already available to the regulators because the information is required to be kept current and filed, and which the CSA already have access to through NRD. Thus, it is not clear why the investment fund manager should have to provide this information again on the F10 since it is already accessible. Similarly, for Item 6 of the F10, the assets under management (AUM) that would be reported in 3 of the 4 reporting periods is not an audited value and while it is calculated for management reporting purposes, it is not verified and if provided in good faith, may put the issuer offside with the certification required under Item 18. We believe the OSC is already informed on much of the required reporting and we do not believe it is necessary to charge fund managers $500 per quarter to provide information that is generally already available to the regulators.

We believe a better reporting approach should be developed. For example, there are two basic types of information: fund information, principally included in Items 1 through 9 ("Fund Data"), and the information about its exempt distributions, principally included in Items 10 through 19 ("Distribution Data"). The Fund Data will typically be unchanged from report to report, whereas most of the Distribution Data will be different for each report. It would be much more effective to have these two different types of data handled separately and differently. First, the system could be designed so the investment fund manager can "set up" the fund initially on the web portal with all applicable Fund Data, and update the Fund Data only when information changes. Then the "high frequency" Distribution Data could be uploaded and filed on a quarterly basis only if there are changes/activity "against" the previously-established record for the fund and if not, filing should continue to be required only annually.

We also recommend the regulators consider other ways to obtain targeted information from investment funds. For example, if the regulators wish to understand the "unregistered" investment fund market better, a more effective and efficient means would be to develop a list of targeted questions and conduct a survey of a sample of investment fund managers. Select a few of those investment managers to meet with, and discuss the market and any issues of regulatory concern.

d) Increased frequency of reporting

The Proposed Amendments seek to increase the frequency of reporting from an annual basis to a quarterly basis however; it is not clear in the Proposed Amendments why annual reporting has not been sufficient. It would be helpful to understand if and how annual reporting previously failed to capture sufficient information or alternatively, what was ineffective about annual reporting to necessitate a shift to more frequent (and costly) reporting.

Of additional concern, the increased reporting schedule for exempt distributions will effectively quadruple the OSC's fees for those who currently report. Some investment funds are relatively small in terms of AUM and/or there isn't enough activity in them from one quarter to another to justify this increased reporting schedule and its associated cost. In our

view, investment funds should not be subject to more frequent and detailed reporting requirements.

One of the overarching objectives of the proposed amendments to NI 45-106, is to increase access to the capital markets for issuers (particularly Start-ups and SMEs) and for investors who are not accredited investors. Such issuers or investors may benefit from greater regulation and enhanced reporting requirements if the proposed exemptions are implemented.

Investment funds can be distinguished from other issuers. Investment funds are generally characterized by:

- Long sales cycle (commonly 2 years or more);
- Low investor turn-over (new clients enter the investment funds from time to time; clients tend to stay in an investment fund once invested - they may contribute additional assets at multiple times per year, but generally don't enter and exit the fund on a frequent basis; no short term trading);
- Investment funds may have more restricted opening schedules (e.g. some open monthly);
- Investment funds are generally in continuous distribution; unlike non-investment fund issuers who may issue securities on a one-time or less frequent basis; and
- Investment funds may already be subject to continuous disclosure requirements, including under National Instrument 81-106 *Investment Funds Continuous Disclosure*.

In light of the investment fund features described above, we believe that reporting on a quarterly basis should not be required. Since generally details pertaining to an investment fund (i.e., service providers, investment objectives, structure) change very infrequently (generally no more than once or twice in the lifecycle of a fund, which may be of significant length), an annual report should be more than sufficient to keep the OSC informed.

e) Electronic reporting

In Alberta, New Brunswick and Saskatchewan, the F10 will be a paper form while in Ontario, this form will be an e-form as stipulated by OSC Rule 11-501 *Electronic Delivery of Documents to the Ontario Securities Commission.* First, the obvious concern with this the inconsistent filing approach required by jurisdiction. Second, the e-form in Ontario aims to be more "user-friendly" and easier to complete; however, the process of data submission would be rendered dramatically easier if it could be accomplished by uploading to the website one or more "flat" data files in prescribed format. Such data files could be generated from the investment fund manager's existing systems, and uploaded quickly, without the need for "copy-typing" from one medium to another. Ideally, this could be provided to all jurisdictions in electronic format.

There is also an issue relating to the choice of acceptable internet browsers available for submitting an e-form. The instructions on the web portal say that only Microsoft's Internet Explorer ("IE") version 8.0 or later, and Mozilla's Firefox 20 or earlier are acceptable. In particular the system does not work with (i) version 11 of IE, (ii) any version of Google's

Chrome browser, or (iii) any version of Apple's Safari browser. In addition to representing a substantial proportion of the overall installed base of web browsers, these other versions/browsers are more up to date and better supported. We recommend the OSC and CSA consider the use of these superior browsers as compatible alternatives to those currently available on the web portal.

Finally, we recommend the OSC work with its CSA counterparts to create a centralized database that compiles statistical data on the information provided through the various report of exempt distribution forms to enable more streamlined and efficient reporting and transparency of information to the regulators.

2. **Should any of the information requested through the Proposed Reports not be required to be provided? Is there any alternative or additional information that should be provided that is not referred to in the Proposed Reports?**

   Please see response above to question 1.

CONCLUSION

The Proposed Amendments include some welcome and positive developments with expanded capital raising opportunities. However, we continue to emphasize the importance of continued harmonization of prospectus exemptions available across Canada and the exempt market reporting regime and we reiterate that this should remain a key priority for the CSA. We urge the OSC and CSA to prioritize harmonizing the exempt market reporting regime. The bifurcation of the exempt market and its reporting regime continues to be a significant problem for market participants. One set of exemptions along with harmonized reporting forms for all market participants available to all jurisdictions would eliminate the current and ongoing administrative confusion and complexity in meeting exempt distribution reporting requirements.

If you have any questions regarding the comments set out above, please do not hesitate to contact me at (905) 331-4250 ext. 4309 or Nadine Milne, PIC's Chief Compliance Officer, at (905) 331-4250 ext. 4689.

Yours truly,

"Frank Laferriere"

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