

June 18, 2014

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

The Secretary
 -and-

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**RE: MULTILATERAL CSA NOTICE OF PUBLICATION AND REQUEST FOR COMMENT
 PROPOSED AMENDEMENTS TO NATIONAL INSTRUMENT 45-106 PROSPECTUS AND REGISTRATION
 EXEMPTIONS RELATING TO THE OFFERING MEMORANDUM EXEMPTION AND IN ALBERTA, NEW
 BRUNSWICK AND SASKATCHEWAN, REPORTS OF EXEMPT DISTRIBUTION (the "Notice")**

This letter is submitted in response to your expressed interest in receiving public comments on the above captioned matter. As requested, this letter contains general feedback related to the Notice, and also selectively addresses some of the Questions on Proposed Amendments that were posed. We have limited responses contained herein to the items that would impact our operations. Generally we are supportive of both the introduction of the Offering Memorandum exemption ("OM exemption") to Ontario and the goals of harmonized securities regulation across Canada.

To provide context to this submission, the current business activities of KV Capital Inc. ("KVC") consist of mortgage origination, mortgage syndication and management of a mortgage investment corporation ("MIC") under the Income Tax Act and non-redeemable investment fund under the Alberta securities regime. To execute the requirements for this business line, our current participation in the capital markets is summarized for convenience in the following tables for each relevant legal entity:

KV Capital Inc.

	Exempt Market Dealer	Restricted Portfolio Manager	Investment Fund Manager
Alberta	Primary Regulator	Primary Regulator	Primary Regulator
Ontario	Registered	n/a	Registered
British Columbia	Registered	n/a	n/a

MIC

	Distributed Under Prospectus Exemption	Distribution Channel
British Columbia	2.9 Offering Memorandum	KVC and third party EMD's

Alberta	2.9 Offering Memorandum	KVC and third party EMD's
Saskatchewan	2.9 Offering Memorandum	Third party EMD's
Manitoba	2.9 Offering Memorandum	Third party EMD's
Ontario	2.3 Accredited Investor 2.10 Minimum Amount Investment	KVC and third party EMD's
New Brunswick	2.9 Offering Memorandum	Third party EMD's
Nova Scotia	2.9 Offering Memorandum	Third party EMD's
North West Territories	2.9 Offering Memorandum	Third party EMD's

General Feedback on Proposed Amendments:

Item Description	Commentary
Lack of nationalized and harmonized OM Exemption	<p>The proposals contained in the Notice would significantly increase the disparity between the regulatory regimes of Canadian jurisdictions in distributing securities under an Offering Memorandum. This fractured approach would have the effect of introducing additional complexity for all actors operating within this segment of the capital markets and it is difficult to understand how such a localized approach will achieve the objectives of fostering fair and efficient capital markets when structurally the process to raise capital under the OM exemption would prohibit efficient, timely and cost effective replication.</p> <p>In contrast to the proposition contained in the Notice that the financing of early stage and small businesses tends to be local in nature, we contend that the financing of such entities is becoming increasingly non-local in nature, and that this is a positive development which should be encouraged by the CSA members. We believe that the formation of capital from a broad and geographically diverse base benefits both investors, and the issuers by expanding the market access of all parties involved.</p> <p>We submit that harmonization should be the top priority for securities regulation in all Canadian jurisdictions.</p>
Annual limits on distributions to investors	<p>The context provided in the Notice regarding the introduction of annual limits on distributions to investors appears to be premised on concerns that individuals may hold exposures to products distributed under the OM exemption that represent significant portions of the investors' income and/or net assets. Presumably the CSA members feel that investors' should not be able to make such allocations.</p> <p>We fundamentally believe that investors should have access to any asset class in which they choose to invest, and the ability to execute their chosen investment strategy (subject to having access to information necessary to evaluate the risk/return proposition). Imposing annual limits on distributions to investors under only one of the available prospectus exemptions available appears paternalistic and undermines the fundamental premise of the OM exemption; to provide investors with a comprehensive disclosure document that allows them to make an informed decision.</p> <p>We will take this opportunity to specifically comment on the following excerpt from the Notice, that we interpret as being a significant contributing factor to the proposals as contained in the Notice (as provided in Annex B of the Notice):</p> <p>"The ASC has received numerous complaints from investors that have invested significant amounts under the OM exemption and incurred significant losses."</p> <p>As the preceding statement provides no empirical evidence, or quantifiable terms it can only be read as a subjective one sided assessment based on the experience of the ASC in</p>

	<p>fielding investor complaints. We submit that investors are not motivated to report to the ASC when investments perform, and accordingly such experience is not a sound base on which to form policy. We further note that investing is inherently based on risk, and that preventing investor losses is not a feasible objective for the CSA members.</p> <p>Registered dealers distributing products under the OM exemption already have suitability obligations under the various securities regimes of Canadian jurisdictions, and accordingly are required to exercise professional discretion to evaluate the suitability of every investment on the merits of the circumstances that are present for the proposed transaction. The sale of investments that are unsuitable for clients by their nature, or because of the size of the investment are already well within the exiting jurisdictions of the various securities regulators to investigate and pursue regulatory action as warranted. Considering these existing obligations for dealers of products distributed under the OM exemption, we cannot reconcile how implementing arbitrary investment limits will further the mandates of the CSA members to balance the formation of capital with investor protections.</p> <p>From a practical perspective, annual limits on distributions to investors under the OM exemption would likely lead to the following outcomes, that we believe are not desirable:</p> <ol style="list-style-type: none"> 1. Practitioners determining suitability will be incentivized to reduce their assessments to satisfying only bright line tests of the maximum contribution permissible; 2. Issuers will reduce the access of retail investors to their private investment strategies due to the increased costs of distribution to and compliance with capital sourced from this group; 3. Capital formation in support of early stage and small business financing will be reduced as available channels are artificially constrained; 4. Retail investors looking to circumvent the rules for annual contribution limits will continue to be able to do so by misrepresenting their participation in distributions and dealing with multiple dealers and issuers; 5. The interaction between retail investors and dealing representatives will be transactional based and will erode the effectiveness of suitability determinations; and 6. Investors may be exposed to significant pressure to invest early in the year while they have contribution room available; and 7. Investors may not be able to reinvest all of the capital returned to them that they have already invested in issuers relying on the OM exemption. <p>We submit that the investor protection regime already put in place under NI 31-103 is superior to the proposals in addressing the concerns identified in the Notice with respect to distributions under the OM exemption.</p>
Reports of exempt distribution	<p>We understand the need to monitor distributions in the exempt market, and in general are supportive of mechanisms that compile this information into meaningful aggregations to support efficient and effective monitoring. We further believe that the information collected in the reports of exempt distribution should be used as a tool in evaluating and improving the operation of these capital markets, but believe that this tool is only effective if the collection of data and fields captured are standardized across all jurisdictions and can form the basis of policy decisions.</p> <p>As outside observers, it appears the proposals in the Notice are significantly influenced by the observations about use of the OM exemption in Alberta (as provided in Annex B of the</p>

	<p>Notice). We note that these observations are based on only two years and the experience of one CSA member, and submit that this is not a representative data set on which to base policy decisions.</p> <p>It is our opinion that the addition of new localized versions for the Reports of Exempt Distribution in the Notice would preclude achieving a robust data set on which policy decisions can be made, and therefore are not desirable.</p>
Eligible investor definition	<p>We note that the primary residence in which individuals' choose to live can vary significantly in worth, and that the proportion of net worth for any individual that is invested in a primary residence is highly correlated to the stage of life when this measurement is taken; accordingly excluding an individual's primary residence in determining whether an investor is eligible or not introduces a bias against investors based on the assets they choose to hold.</p> <p>Notwithstanding the above, should amendments to the definition of eligible investor be required, we submit that the changes should be uniform across all jurisdictions and that excluding an individual's primary residence from the definition should be matched by excluding any associated liability with that asset like a mortgage.</p> <p>In line with the points noted in previous sections of this submission, we view the introduction of localized definitions for eligible investors to be an unnecessary complication in the nuances of the regulatory regime that would impede the efficient operation of the compliance function for dealers operating in multiple jurisdictions, and the investors with whom they interact.</p>

Response to Select Questions on Proposed Amendments:

Question Posed	Commentary
13. Should non-redeemable investment funds continue to be permitted to use the OM Exemption?	<p>It is our opinion that non-redeemable investment funds should be permitted to use the OM exemption.</p> <p>The premise of the OM exemption is to provide investors with a comprehensive disclosure document that stands on its own and is easily understood. The Notice does not provide justification for why using an issuer's determination under securities legislation as a non-redeemable investment fund as a basis to determine eligibility to distribute under the OM exemption is appropriate. This item is of particular concern to us when the categorization of issuers into this framework is not consistent across all Canadian jurisdictions.</p> <p>Under the proposals as contained in the Notice, mortgage investment entities subject to the Alberta regulatory regime would likely be precluded from relying upon the OM exemption in Ontario and New Brunswick, despite the fact that non-Alberta based competitors would have access to capital sourced from this channel. The introduction of a structural bias into the capital markets is unacceptable in our opinion.</p> <p>We submit that an issuer's ability to access capital should not be artificially constrained, and that a level playing field should be the top priority of the securities regulators in all Canadian jurisdictions.</p>
15. Should issuers that are related to registrants that are involved in the sale of the issuer's	<p>It is our opinion that issuers related to registrants that are involved in the sale of the issuer's securities should be permitted to use the OM exemption.</p> <p>Further to the points noted in previous sections of this submission, we believe that the existing obligations of registered dealers to determine suitability applies irrespective of the dealers relationship to the issuer, and that accordingly any conflicts of interest that may</p>

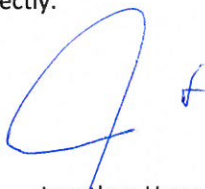
securities under the OM Exemption be permitted to continue using the OM Exemption?	<p>exist are able to be effectively mitigated through disclosure of the relationship to the investors and a robust suitability process.</p> <p>We further note that within the capital markets (particularly mutual fund dealers and investment dealers), it is common practice to regularly, and often exclusively, sell securities of a related issuer. We submit that the conflict mitigation approaches that have operated to the satisfaction of the regulators would be equally effective for issuers distributing under the OM exemption.</p> <p>As a final point, we note that the Notice states the OM exemption is designed to facilitate early stage and small business financing. We suspect that if all of the proposals in the Notice are adopted many registered dealers would be less willing to undertake fundraising efforts for enterprises that have a risk of undercapitalization (due to a decreased ability to source capital). The effect of preventing issuers related to registrants that are involved in the sale of the issuer's securities from distributing under the OM exemption would effectively provide these issuers with no alternative to source capital and accordingly would decrease the number of early stage and small businesses that are able to secure financing.</p>
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We appreciate the opportunity to provide comments on these proposals and trust that our efforts will be useful in constructing an efficient and effective regulatory framework. Should anything referenced herein require additional explanation, please contact the undersigned directly.

Sincerely,



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President
UDP



Jonathan Herman, CA
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CCO

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