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BY E-MAIL

British Columbia Securities Commission
Alberta Securities Commission
Financial and Consumer Affairs Authority (Saskatchewan)
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
Financial and Consumer Services Commission (New Brunswick)
Superintendent of Securities, Department of Justice and Public Safety, Prince
Edward Island
Nova Scotia Securities Commission
Securities Commission of Newfoundland and Labrador
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Yukon
Superintendent of Securities, Nunavut

c/o
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-and-

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Dear Sirs / Mesdames,

**Re: Comments on Canadian Securities Administrators Request for Comments
relating to Proposed Rights Offering Exemption dated November 27, 2014**

TORONTO

MONTREAL

OTTAWA

CALGARY

VANCOUVER

NEW YORK

LONDON

SYDNEY

I am submitting these comments in response to the CSA's Proposed Amendments to NI 45-106 *Prospectus and Registration Exemptions*, NI 41-101 *General Prospectus Requirements*, NI 44-101 *Short Form Prospectus Distributions* and NI 45-102 *Resale Restrictions* and Proposed Repeal of NI 45-101 *Rights Offering* (the "Proposed Amendments"). My comments on the Proposed Amendments are set out below.

Requirement to extend offer to all security holders

I note that page 4 of the Request for Comments under the heading "Offer to all security holders" states as follows:

"One of the conditions of the Proposed Exemption is that the issuer must make the basic subscription privilege available on a *pro rata* basis to each security holder of the class of securities to be distributed on exercise of the rights. This requirement means that an issuer using the Proposed Exemption must offer the rights to all security holders of that class in the local jurisdiction, even if there is only a small number of securityholders in that jurisdiction." [Emphasis added]

Proposed section 3.10(1) of the Companion Policy to NI 45-106 further states as follows:

"One of the conditions of the rights offering exemption for reporting issuers in section 2.1.1 of the Instrument is that the issuer must make the basic subscription privilege available on a pro rata basis to every security holder of the class of securities to be distributed on exercise of the rights. This means that the issuer must send notice of the offering to each security holder of the class in the local jurisdiction, regardless of how many security holders reside in the local jurisdiction." [Emphasis added.]

Despite references to making the offer or sending the notice to security holders *in the local jurisdiction* in the statements highlighted above, I note that there is nothing in the actual proposed rule amendments to NI 45-106 itself that clarifies that the rights offering is only required to be extended to securityholders in the local jurisdiction. In fact, the use of the term "all holders" or "each holder" without any further qualification in various sections of the Proposed Amendments to NI 45-106 would imply the contrary. See, for example, sections 2.3.1(3)(e) and 2.3.1. (6)(a).

Based on experience with the existing exemption, issuers can face substantial difficulty in extending a rights offering to jurisdictions outside of Canada where the legal or regulatory environment either restricts or makes it very challenging (including where it imposes other requirements, increases costs, etc.) to extend the offering, disseminate materials or comply with other elements of the exemption. I would therefore suggest that the proposed amendments should make it clear in NI 45-106 itself that the offering is required to be extended only to security holders in the local jurisdiction. If the intention was otherwise, I submit that the Proposed Amendments should provide for an exemption or carve-out where the laws or regulations of the jurisdiction of a security holder prevent or restrict the issuer from

extending the rights offering exemption or otherwise impose any substantial impediments to complying with any aspect of the exemption.

Mailing of Notice

I note that in a number of places in the notice of the Proposed Amendments reference is made to the requirement to "send certificates" in the context of explaining why the requirement to send the proposed notice on Form 45-105F14 would not be additionally burdensome as certificates will be required to be sent. I do not believe the assumption that is implied, that certificates would generally or broadly be required to be sent, is necessarily correct. Given the prevalence of beneficial owners holding their entitlements indirectly through brokers or other intermediaries, certificates would not broadly be sent as they would be sent only to registered holders.

Translation

With respect to the requirement in section 2.1.3(f), I believe there should be a *de minimus* exemption from the requirement to offer rights to holders of securities in Quebec and/or to translate the notice and circular in French, as the added cost and time would not be justified absent a sufficient security holder base in Quebec.

Forward Looking Disclosure

There is much required disclosure about issuers' future financial circumstances (e.g. at the top of Part 2 of the Proposed Amendments). It strikes me that it is far too definitive and needs to be softened to reflect the fact that there will be much uncertainty about future cash requirements, etc.

Thank you for the opportunity to comment on these proposals. These comments represent my own views (and not those of the firm generally or any client of the firm) and are submitted without prejudice to any position taken or that may be taken by our firm on its own behalf or on behalf of any client.

Regards,



per:

Simon A. Romano

SAR/he