

October 13, 2015

VIA EMAIL

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

The Secretary
Ontario Securities Commission
20 Queen Street West
22nd Floor
Toronto, Ontario M5H 3S8

Me Anne-Marie Beaudoin
Corporate Secretary
Autorité des marchés financiers
800, square Victoria, 22e étage
C.P. 246, tour de la Bourse
Montréal, Québec H4Z 1G3

Re: Request for Comment on Proposed Amendments to National Instrument 45-106
Prospectus Exemptions Relating to Reports of Exempt Distribution

Dear Sirs and Mesdames:

This letter is on behalf of Canadian institutional investors, British Columbia Investment Management Corporation, Canada Pension Plan Investment Board, Ontario Teachers' Pension Plan Board and RBC Global Asset Management Inc., and U.S. broker-dealers, Barclays Capital Inc., Citigroup Global Markets Inc., Goldman, Sachs & Co., J.P. Morgan Securities LLC and Merrill Lynch, Pierce, Fenner & Smith Incorporated, to provide comments on the proposed revisions to Form 45-106F1 *Report of Exempt Distribution*. The group was formed to make submissions regarding requirements that may unnecessarily impede the access of Canadian institutional investors to cross-border investment opportunities.

While we acknowledge the goal of the Canadian securities regulators to have the necessary information to facilitate more effective regulatory oversight of the exempt market, the dealers in the group have not encountered a comparable post-trade filing requirement in placing securities cross-border with institutional investors in any other jurisdiction. Since the cost of filing post-trade reports is ultimately borne by the issuer, dealers need to be able to justify this additional

cost to issuers. Extending distributions into Canada provides some expansion of the potential market for the securities being distributed, but typically not sufficiently to improve the pricing for the issuer. Thus, we are concerned with revisions to Form 45-106F1 that may increase costs without a commensurate benefit in respect of the provision of useful information. New items of detailed information since the previous proposal applicable to all issuers are:

- Issuer's website, North American Industry Classification Standard Code (type of fund for investment funds) and legal entity identifier (under the Global Legal Entity Identifier System – not applicable for investment funds).
- Size of the issuer's assets (NAV for investment funds) (in bands).
- Underwriter's National Registration Database number.
- CUSIP number and specified security codes for the security issued.
- Details for each person to whom the issuer directly provides or will provide any compensation as a result of the distribution, and must now include not only cash compensation or securities, but also gifts, discounts or other compensation. (An example given in the sample new form is "basketball tickets".)
- Email addresses of the purchasers.

Items retained since the previous proposal include:

- Number of employees of the issuer (in bands).
- Date of formation and financial year end of the issuer.
- Names of all exchanges on which securities of the issuer are traded.

Generally in determining the extent of information to require, we note that each incremental amount of information entails increased costs to the capital markets, in terms of an underwriter and counsel collecting the information and completing the form, as well as any costs incurred by the regulators in compiling the information into a usable form. In respect of Question 1 of the Request for Comment, we respectfully submit that the compliance burden for certain items exceeds the benefits of collecting the information to facilitate more effective regulatory oversight of the exempt market.

We acknowledge and strongly support the proposal to provide exemptions from the provision of some of the more detailed information in the case of certain issuers, including eligible foreign issuers distributing securities only to permitted clients. We also strongly support the harmonization of the previous proposal for multiple forms into a single form for all jurisdictions.

Issuer Information

Date of Formation: For many issuers providing its date of formation is not difficult, but for an issuer that has been in existence for a long time and subject to various mergers and reorganizations over the years, determining an exact date of formation can be problematic. Instead of requiring the exact date of formation, we suggest that the form require a box to be checked to indicate whether the issuer has been in existence longer than a specified number of

years. So long as the regulators know the issuer has been in existence at least a certain number of years, as determined by the regulators, it would not seem necessary for the regulators' analysis of exempt market activity to know the exact date of formation of an issuer.

Listing of Exchanges: We suggest the regulators' goals in collecting information would be met if this item is limited to the primary exchange for the issuer's securities as well as any Canadian exchanges on which they are listed. For some issuers, collecting and providing this information on each filing could be burdensome. For example, in addition to the primary listing of an issuer's equity securities, the equity securities could be listed on a number of additional exchanges around the world, while its preferred shares, ordinary debt securities and structured notes could be listed on a number of other exchanges.

Number of Employees and Amount of Assets: We suggest that this data would be more meaningful if (i) the numbers of employees and amounts of assets are to be provided on a consolidated basis, and (ii) the form provides the option for this information to be provided for the guarantor instead of the issuer in the case of guaranteed debt.

Purchaser Information

Naming Beneficial Owners of Fully Managed Accounts: Subsection 2.3(4) of National Instrument 45-106 *Prospectus Exemptions* ("**NI 45-106**") states that "a person described in paragraph (q) of the definition of 'accredited investor' ... is deemed to be purchasing as principal." Paragraph (q) of the definition is "a person acting on behalf of a fully managed account managed by that person, if that person is registered or authorized to carry on business as an adviser or the equivalent under the securities legislation of a jurisdiction of Canada or a foreign jurisdiction." Since NI 45-106 recognizes the person making the investment decision as the purchaser of the securities, we respectfully submit the identities of the beneficial owners of the underlying fully managed accounts have no relevance to the availability of the "accredited investor" exemption or the functioning of the exempt market. Since these identities are not relevant to reliance on the exemption, we question how identifying the underlying account holders provides information that would facilitate more effective regulatory oversight of the exempt market or improve analysis for policy development purposes, the stated purpose of the provision of the information in Form 45-106F1.

The provision of this information would often be particularly burdensome. Neither the issuer nor the underwriting group generally has direct knowledge of the names of the identities of the beneficial owners of fully managed accounts. The underwriters deal only with the entities managing the accounts. The disclosure requirement covers not just names of account holders, but their addresses, phone numbers and email addresses as well as the complete allocation of securities among each of the managed accounts. Where securities are priced in a currency other than non-Canadian dollars, the dollar amount for each allocation would be required to be converted into Canadian dollars. Unless the beneficial owners of fully managed accounts are investment funds, the number of beneficial owners could be very large.

If any of the beneficial owners of fully managed accounts are individuals, an offering under the accredited investor exemption may no longer be practical. The issuer or underwriter filing the report is required to provide a confirmation with respect to the authorization of the provision of personal information. However, since neither the issuer nor the underwriter generally would have any contact with the individual owners of fully managed accounts, they would have to rely on the registered adviser for the authorizations. The situation becomes particularly problematic if any individual were to refuse to provide the required authorization. Additional information

required to be disclosed in the revised form is proposed to include email addresses of purchasers, which individuals may not wish to be disclosed. Moreover, portfolio managers may be reluctant to provide the names and contact information of their clients to an underwriter for competitive reasons.

Technical Comments

Details of Convertible/Exchangeable Securities: The restricted tabular format for providing information on the terms of convertible/exchangeable securities does not recognize the current nature of many convertible/exchangeable securities, in which the conversion/exercise price is not a specified dollar amount and the expiry date is not a specified date. We recommend the information be permitted to be provided in narrative form so long as it includes the determination of the conversion/exercise price and the expiry date or provide for the option of a tabular or narrative format.

Conversions into Canadian Dollars: Standardizing exchange rate determinations using the Bank of Canada noon rate on the distribution date is fine so long as the Bank of Canada provides a noon rate on that day. However, the distribution of securities of foreign issuers to Canadian investors sometimes occurs on a date that is a statutory holiday in Canada, in which case a Bank of Canada noon rate on that day is not available. We suggest the form provide for the determination of exchange rates using the most recent Bank of Canada closing rate before the distribution date in that situation.

Thank you for consideration of our comments. We are available to provide further input on any of them.

British Columbia Investment Management Corporation
Canada Pension Plan Investment Board
Ontario Teachers' Pension Plan Board
RBC Global Asset Management Inc.
Barclays Capital Inc.
Citigroup Global Markets Inc.
Goldman, Sachs & Co.
J.P. Morgan Securities LLC
Merrill Lynch, Pierce, Fenner & Smith Incorporated