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October 13, 2015

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 Territory
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Nunavut

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Re: CSA Notice and Request for Comment Proposed Amendments to National Instrument 45-106 Prospectus Exemptions relating to Reports of Exempt Distributions

The Portfolio Management Association of Canada (PMAC)¹, through its Industry, Regulation & Tax Committee, is pleased to have the opportunity to submit comments regarding CSA Notice and Request for Comment Proposed Amendments to National Instrument 45-106 Prospectus Exemptions relating to Reports of Exempt Distributions (the "Proposed Amendments" or "Proposed Report").

¹ As background, PMAC represents investment management firms registered to do business in Canada as portfolio managers. In addition to this primary registration, some firms will be dually registered as exempt market dealers, investment fund managers or other registration categories. PMAC was established in 1952 and currently represents over 200 investment management firms that manage total assets in excess of \$1.4 trillion. Our mission is to advocate the highest standards of unbiased portfolio management in the interest of the investors served by members. For more information about PMAC and our mandate, please visit our website at www.portfoliomanagement.org.

General Comments

PMAC supports the efforts of the Canadian Securities Administrators ("CSA") to reduce the compliance burden for issuers and underwriters under the exempt distribution reporting regime as evidenced by the welcome changes included in the Proposed Amendments. As stated in our submission dated May 28, 2014 in response to the CSA's February 2014 Proposals², one set of 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. Similarly, in our submission dated June 18, 2014 in response to the CSA's March 2014 Proposals³, we opposed the introduction of Form 45-106F10 *Report of Exempt Distribution for Investment Fund Issuers (Alberta, New Brunswick, Ontario and Saskatchewan)* which would have resulted in three different forms for reporting exempt distributions. PMAC is pleased that the Proposed Report addresses our concerns and the concerns of the industry generally.

The Proposed Amendments include several welcomed changes. First, we applaud the CSA for its decision to move ahead with a new harmonized Proposed Report which will replace the current bifurcated reporting approach that continues to be a significant problem for market participants. Second, in regards to the filing deadlines for investment funds, we support the decision to not proceed with the quarterly filing requirement. We also applaud the change to streamline the Proposed Report so that it will not require certain information that can be gathered through an issuer's continuous disclosure filings, an issuer's profile on the System for Electronic Document Analysis and Retrieval (SEDAR) or a registrant firm's National Registration Database (NRD) profile.

We believe that changes included in the Proposed Amendments are positive steps toward a harmonized exempt distribution reporting regime. However, there are still some areas of the Proposed Report that require clarification and some items that will create unnecessary complexity and inefficiencies for market participants. We believe the compliance burden associated with providing certain detailed information in the Proposed Amendments, in some cases, outweighs the benefits to the regulators and will not help to achieve more effective regulatory oversight of the exempt market. These are discussed in more detail below.

Concerns with the Proposed Report

While we support a harmonized Form 45-106F1 and appreciate the objective of the regulators to obtain more information about the exempt market, there are several data fields that are confusing and/or that we do not believe are necessary and will be unduly onerous for market participants. We respectfully submit that the following reporting requirements of the Proposed Report do not strike an appropriate balance between the benefits of collecting this information, and the additional compliance burden that may result for issuers and underwriters.

² On February 27, 2014, the CSA published for comment proposed amendments to the Current Reports in conjunction with proposed amendments to NI 45-106 relating to the accredited investor and minimum amount investment prospectus exemptions (the February 2014 Proposals).

³ On March 20, 2014, Alberta, Saskatchewan, Ontario and New Brunswick published for comment two new proposed forms for reporting exempt distributions (the March 2014 Proposals): proposed Form 45-106F10 *Report of Exempt Distribution For Investment Fund Issuers* (Proposed Form 45-106F10), and proposed Form 45-106F11 *Report of Exempt Distribution For Issuers Other Than Investment Funds* (Proposed Form 45-106F11).

- Items 4 and 5 - Funds that are not investment fund issuers, such as private equity funds, for example, will have difficulty completing the Proposed Report. Specific issues are identified below:
 - *Item 4a) Primary Industry* - the industry categories should be expanded or include a field for "other" as the current categories are not applicable;
 - *Item 4b) Size of issuer* - private equity funds do not have employees and therefore, a response to this item would not be appropriate;
 - *Item 4h) Size of issuer's assets* - since private equity funds are more akin to investment funds, net assets may be more relevant; and
 - *Item 5a) Directors, executive officers, control persons and promoters of the issuer* - private equity funds would not have directors or executive officers. The related Schedule 1 requires the disclosure of the Chief Executive Officer which would not be available.

Additionally, as they are not investment funds, such information described above will need to be completed within the very short 10 day timeframe, which increases the administrative burden.

- Item 6c) requires the financial year-end. We query why the regulators wish to collect this information. As the filing for investment funds is based on the calendar year, it is not clear what benefit this additional information will provide.
- Item 7g) - The collection of information relating to net proceeds, or more particularly redemptions, appears to be a significant departure from the current practice of reporting gross proceeds by jurisdiction that has existed for a long time. Please explain why the regulators wish to collect redemption information from investment fund issuers as we do not see a policy rationale to require this information. The collection, calculation and reporting of this information would be unnecessarily burdensome for investment fund managers and would not be at all interrelated to the substance of exempt trade reporting, being reporting exempt distributions of securities. Further, we note that since the value of investment funds change, redemptions would not necessarily match the amount purchased by the redeeming investor thereby limiting the value of this information to the regulators. This concern was raised in previous submissions by PMAC and other commentators.
- Item 7h) includes a reference to "marketing materials (presentations)". Please confirm what is intended by this reference as marketing materials are not currently considered offering material required to be filed or delivered to the regulators.
- Schedule 2 requires "Purchaser Information" such as the applicable category of accredited investor exemption, for example, relied upon for each purchaser. We note the modification in the Proposed Amendments to only require one subsection of the exemption relied on to be documented (as opposed to multiple subsections). However, we still question the rationale of requiring this level of detail. Investment fund issuers often rely on registrar data for providing the detailed purchaser information but will now have to lean more heavily on portfolio managers and dealers in confirming specific information like this.

We also have concerns with the requirement to provide detailed information about the beneficial owners of managed accounts in Schedule 2 of the Proposed Report. Under NI 45-106, the registered portfolio manager making the investment decision is recognized as the purchaser with respect to a managed account under paragraph (q) of the definition of accredited investor. As the identity of the beneficial owner has no significance when it comes to the availability of the managed

account exemption in the first place, we question its relevance for purposes of Schedule 2 or for the functioning of the exempt market generally. It is unclear how this information might facilitate more effective regulatory oversight, particularly when weighed against the difficulty of collecting the information.

Clarification Required for Certain Items

Please provide clarity in the instruction document or guidance on the following items in the Proposed Report.

- *Item 6b) Type of investment fund* – Please clarify or provide guidance around what is meant by “alternative strategies”. In addition, we seek clarification on the threshold which determines whether a fund invests “primarily” in other investment funds. Is it strictly tied to the fund’s investment objectives? For example, where a fund is investing in other investment funds though not as a result of a formal investment objective but when such investment is nevertheless available as an investment strategy, does this include when a fund holds 50% or more of another investment fund? Similarly, as holdings could fluctuate throughout the year, is there a point-in-time determination?
- *Item 6f) NAV of investment fund* – Please clarify what is intended by “Date of most recent NAV Calculation”. Please confirm whether this date is intended to be December 31 or not. If so, please explain how this information is relevant for the exempt trade report as in most cases the report would reflect multiple trades over the course of the year and none of which may have occurred on December 31.
- *Item 7b) Distribution date(s)* – Please clarify what would be required for funds in continuous distribution as start / end dates would not apply in this scenario.
- *Items 7a), 7c), 7d), 7f) and 7g)*– The instructions to the Proposed Report indicate that: (i) all dollar amounts reported must be in Canadian dollars; and (ii) if the distribution was made in a foreign currency, the currency should be converted as per the daily noon exchange rate of the Bank of Canada on the date of distribution. We note there could be a significant exchange rate impact to the disclosure provided and would like clarification around the currency conversion expectations. We recommend that the foreign exchange rate be consistent with the standard industry foreign exchange rate, the WM/Reuters Closing Spot Rates, which are available for more currencies than the daily noon exchange rate of the Bank of Canada. As stated above, we query why the net proceeds calculation by jurisdiction requires a calculation of redemptions. This calculation will be difficult to collect for funds that have been in existence for many years, particularly where the calculation involves foreign exchange, and it remains unclear why this information would be necessary. We note there could be a significant exchange rate impact to the disclosure provided, especially for investment funds under continuous distribution, and would like clarification around the currency conversion expectations.
- *Item 8d) Compensation details* – Please provide further clarification on what is intended to be included under deferred compensation. For example, if trailing commissions are expected to be disclosed, providing estimates of the trailing commission, for example, would be burdensome and dependent on various assumptions so it is not clear what benefit this additional information will provide.

- *Schedule 2:*
 - *Item F1) Other information* – It will not always be possible to answer whether the purchaser is a registrant, from an investment fund manager’s perspective, this information is not provided through FundServ and so would require manual work for an investment fund manager to ascertain. As this information is available on NRD, we query why this is required. Please clarify what is expected here. Additionally, we note that sections a), d) e) and f)(3) of Schedule 2 are largely repetitive. It is not clear why the same information needs to be provided twice and we would like to see entries streamlined and/or auto-populated in an electronic filing.
 - While the current form of report requires information to be provided per purchaser, the new Proposed Report requires information to be provided not only per purchaser but per distribution. Consequently, if an investor (or portfolio manager on behalf of a managed account) were to purchase units of a fund multiple times over the course of the year, a separate entry will be required for each purchase. Please confirm that this is what is intended.

Operational Issues

While we support the decision to not proceed with the quarterly filing requirement, we are concerned that the requirement for investment funds to file reports annually within 30 days of the calendar year end maybe be difficult given the additional information required. We recommend the CSA consider an extended filing deadline of 60 calendar days from year-end in light of the significantly increased administrative demands associated with gathering the additional information requested by the Proposed Amendments. We believe this timeframe will allow issuers and investment funds a more reasonable period in which to ensure all of the required information is properly collected. Similarly, for private equity funds, additional filing time should be provided that mirrors the investment fund filing period.

In regards to the filing formats for the information required in Schedules 1 and 2 (i.e. excel or CSV format), please clarify whether the same format is permissible filings under Item 8 when providing compensation details. We also seek confirmation whether filing in PDF format is permissible. We also believe it would be operationally efficient if multiple investment funds could be covered under one form.

In Ontario, issuers will continue to file on the OSC e-portal. In British Columbia, issuers will continue to file through BCSC’s eServices. In the remaining provinces and territories, it has been proposed that in the remaining CSA jurisdictions, issuers file in electronic format on SEDAR. Although the proposed rule amendments permit the filings to be made privately, non-public information could inadvertently be made public. SEDAR was not built to accommodate filings in respect of private placements and will increase the cost of reporting for issuers. The non-harmonized filing methods will erode some of the benefits achieved by having a harmonized report of exempt distributions. In light of the fact that a longer-term CSA project is underway to create a single integrated filing system for reports of exempt distribution that would further reduce regulatory burden on market participants, we recommend that the transition period for filing the new Proposed Report be linked to the timing of release of this new filing system.

Conclusion

The Proposed Amendments include welcome and positive developments. However, we believe that further clarification is needed for some of the information required in the

Proposed Report. We also have concerns that some of the additional information the regulators are proposing to collect is unnecessary and should be reconsidered. We also request that the CSA jurisdictions try to improve the filing format and harmonize the filing method to reduce cost in terms of time and money for issuers.

If you have any questions regarding the comments set out above, please do not hesitate to contact Katie Walmsley at (416) 504-7018 or Julie Cordeiro at (416) 504-1118.

Yours truly,

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