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**VIA EMAIL**

**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

Dear Sirs/Mesdames:

**Re: Proposed Amendments to NI 45-106 Prospectus Exemptions relating to Reports of Exempt Distribution (the "Proposed Amendments")**

We are writing in response to the request for comments on the Proposed Amendments dated August 13, 2015. We appreciate the opportunity to comment on the Proposed Amendments.

Invesco Canada Ltd. is a wholly-owned subsidiary of Invesco Ltd. Invesco is a leading independent global investment management company, dedicated to helping people worldwide build their financial security. As of September 30, 2015, Invesco and its operating subsidiaries had assets under management of approximately US\$755.8 billion. Invesco operates in more than 20 countries in North America, Europe and Asia.

We welcome the initiative of the Canadian Securities Administrators ("CSA") to harmonize the Report on Exempt Distributions (the "Report") and acknowledge and appreciate the revisions to the relevant form based on previous comments submitted. We believe the revised form of the Report contained in the Proposed Amendments is a vast improvement over the previous proposals and goes a long way to addressing our concerns. Invesco Canada files reports on exempt distributions for itself and its global affiliates. We rely on private placement exemptions to distribution mutual funds and pooled funds to institutional investors and our global affiliates occasionally sell a Canadian investment product to clients in

their home jurisdictions in reliance on private placement exemptions. Notwithstanding the improvements to the form of the Report, we are concerned that the simple burden of reporting is leading to the retraction of Canadian investment products from global markets. We have been informed by our European affiliates that they will likely discontinue any sales of these products due to the reporting burden and concerns with investor privacy, the latter of which we will address below. We do not believe this result is unique to Invesco and we urge the members of the CSA to re-consider each item to determine if the burden can be reduced.

Notwithstanding the improvements to the Report, we continue to have concerns with certain information requirements that we believe present a burden to issuers completing the report and which relate to items that we do not believe are necessary to achieve the regulatory goals of the Report.

### **Currency**

Pursuant to instruction 9 of the proposed Report, foreign currencies must be converted to Canadian dollars using the daily noon exchange rate of the Bank of Canada on the distribution date and the foreign currency used must be disclosed in the Report. Under previous versions of the Report, filers were simply required to use the year end rate.

It is not clear to us what regulatory purpose is achieved by such precision on currency reporting yet the burden is quite clear. When foreign sales are made, they are typically made in the local currency. It is not uncommon for there to be many transactions during the year since investment funds typically are in constant distribution. Our affiliates report sales to us periodically for filing purposes and it is very time consuming at that point to go back, determine the exchange rate on each distribution date during the year and convert the transaction price. It is much simpler to use the end of year rate. Using such a rate would reduce the time required by a day or two for an investment fund manager to complete the Report and it would still provide CSA members with a fairly good indication of the size of the exempt market. As such, the cost of compliance in this instance far outweighs the benefit of the information.

### **Summary of Distributions**

Items 7(f) and 7(g) of the Report appear to require similar information but with an important distinction. The instructions for item 7(f) state that "for issuers located outside of Canada, only report distributions to purchasers in a jurisdiction of Canada." We believe that this is quite sensible as it is beyond the interest of Canadian regulators to know what distributions are made outside Canada by a foreign issuer, even though some of their clients might be Canadian. However, this exclusion does not appear in item 7(g). We assume this is an oversight, but the omission makes the reporting quite onerous. Why would the CSA care about the net proceeds of a distribution in France by a French issuer merely because the issuer also distributed in Canada? While the definition of "net proceeds" at the end of item 7(g) might resolve that question, we believe the inconsistent wording will lead to confusion and over-reporting. We urge the CSA, therefore, to add the wording from item 7(f) to item 7(g)

## **Offering Materials**

Item 7(h) of the proposed Report requires the issuer to list all offering and marketing materials used in relation to the distribution and to file these materials. For investment fund issuers, the use of private placement exemptions relates primarily to their institutional business. While a base presentation may be created for each product, the actual presentation used in each meeting is tailored to each prospective client. As such, compliance with this requirement would require that each presentation be listed and filed with securities regulators. We view this as a burden without a corresponding benefit. We can understand the requirement for the formal offering memorandum to be filed, but it seems odd that marketing materials of this nature would have to be filed for exempt clients but not for retail clients purchasing a distribution under a prospectus. (That is, retail investors also receive marketing materials beyond the offering documents, yet the only time marketing materials would ever be filed would be in response to a Staff request on a prospectus filing.) While it is fairly simple to track what meetings have occurred, the added burden of tracking marketing materials would be a new process for the individuals responsible for filing the Report. If there were a clear benefit to regulators in possessing this information, the burden is understandable. However, it is naïve to assume that even a small proportion of these presentations will be reviewed by regulators and, even if they are reviewed, it is not clear what the purpose of that review would be. As such, we ask that this requirement be dropped. We note that Staff always has the power to conduct a desk review and to request these materials from issuers on an ad hoc basis, should there be a need to do so.

## **Schedule 2**

Schedule 2 requires information as to the purchaser. Previously, the issuer was required to collect but not submit this information. The request to now provide this information is problematic in two ways.

First, one of the exemptions often relied upon, especially as regards foreign sales, is the managed account exemption or, more particularly, definition (q) of “accredited investor”. Presumably, one reason the CSA requests purchaser information is to verify that purchasers qualify for private placements. But if the purchaser is in a managed account, the identity of the purchaser is not relevant. It is possible that the intent of this requirement is simply to identify the registrant, foreign or domestic, using the exemption and not to identify the individual account holder. This would make more sense in our view. If that interpretation is correct, we believe that such interpretation should be stated explicitly in the instructions for Schedule 2. If that interpretation is incorrect, we urge the CSA to reconsider the requirement.

Second, especially among European investors, privacy is a major concern. Any transmittal of personal information, as is required under Schedule 2, raises such concerns and it is incumbent upon CSA members to ensure that the individual’s personal information is secure. We are concerned because there are many stories in the news about government databases being hacked and individual personal information being stolen. We have no reason to believe that CSA members’ information systems are any more secure than those of other government agencies that have been hacked, both in Canada and the U.S. (including, most recently, the hack of the Office of Personnel Management in which the personal information of all

U.S. government employees may have been captured). As such, we believe that a regulatory authority must be extra careful in requesting this type of information and should only request it if it is absolutely necessary. Requesting it *en masse* is difficult to justify and, therefore, the existing rule whereby the issuer must collect this information but only submit it to regulators on demand should be preserved.

As final matter, as noted above, our European clients are especially sensitive to this issue. We have been advised that such sales will likely come to an end partly due to the burdens of filing the Report but mainly because of the privacy issues we noted above in regards to Schedule 2. This is a very minor part of our business and, as such, is of limited concern; however, we believe that if we are faced with this issue other registrants must be in a similar position. We believe having foreign investors in Canadian investment products is of net benefit to Canada and, therefore, where possible, regulation that impedes that effort should be avoided.

### **Specific Questions Raised in the Request for Comments**

1. As explained above, in a few circumstances, we believe that the request for information contained in the Report is overbroad and results in a compliance burden that outweighs the benefit of collecting the information.
2. Most of the information requested in the Report can be seen to support the stated objectives of the CSA. As noted above, however, we believe that Item 7(g) should be clarified to ensure reporting relates only to distributions in Canada and Schedule 2 should be curtailed due to privacy concerns.
3. As an investment fund manager, we can only respond to this question as it relates to investment funds. We believe the net asset value information is the most appropriate metric to accomplish the regulatory purpose.
4. This question is inapplicable to investment funds and, therefore, we decline to comment.
5. We believe the carve-outs listed in this question provide appropriate relief.
6. This question is inapplicable to investment funds and, therefore, we decline to comment.
7. This question is inapplicable to investment funds and, therefore, we decline to comment.
8. We have concerns with respect to providing the information in Schedule 2, as discussed above; however, otherwise an appropriate balance between public and non-public information appears to have been struck. We have no concerns with the publication of the firm's NRD number.
9. The instructions for the proposed Report make it clear which sections apply to which issuers. As such, we do not believe it is necessary to create a separate form for investment fund issuers. While some of the information does not appear to be entirely necessary, it is likely that such information will not change much from Report to Report and, therefore, it is of little concern.

10. As our financial year end is December 31, the change to calendar year end does not present us with any issues.
11. Filing personal information in electronic form exacerbates the privacy concerns we raised above. Beyond that, we are comfortable using Excel format and would welcome and adopt any templates provided by the CSA.

Thank you for the opportunity to comment on these matters. We would be pleased to discuss our comments with you at any time.

Yours Truly,

**Invesco Canada Ltd.**

A handwritten signature in black ink, appearing to read "Eric Adelson", with a long horizontal flourish extending to the right.

Eric Adelson  
Senior Vice President  
Head of Legal – Canada