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October 13, 2015

Dear Sir/Madame:

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

The Investment Industry Association of Canada (the "IIAC" or "Association") appreciates the opportunity to comment on the Proposed Report.

The Association supports the creation of a harmonized Report of Exempt Distribution, as it results in a much more cost effective and efficient process, where capital is raised in the exempt market. It also allows for direct comparability of data when financings are undertaken across jurisdictions.

We are concerned, however, about the amount and type of information required to be disclosed in the Proposed Report. It appears the purpose of the Proposed Report has expanded from requiring the issuer to provide sufficient information to track compliance with the regulation, to providing the regulators and the public with significantly expanded disclosure which, in certain cases, does not provide additional

investor protection, and raises privacy and confidentiality concerns that may discourage issuers and certain investors from participating in such transactions.

CSA Questions

1. **The information collected in the Proposed Report would enhance our understanding of exempt market activity and, as a result, facilitate more effective regulatory oversight of the exempt market and inform our decisions about regulatory changes to the exempt market. Do the reporting requirements of the Proposed Report strike an appropriate balance between: (i) the benefits of collecting this information, and (ii) the compliance burden that may result for issuers and underwriters? If not, please explain.**

   This question is best addressed through the discussion of specific issues, rather than a general statement about the burdens and benefits of the amendments as a whole. Our positions on the specific issues are articulated below.

2. **Are there reasons why any of the information requested in the Proposed Report should not be required? Is there any alternative or additional information, including as requested in the March 2014 Proposals, that would better support compliance or policy analysis?**

   The Proposed Report requires certain disclosure from private issuers that could be used by competitors or by parties negotiating with the issuer, to compromise their position. For example, the size of the issuer's assets could provide important information to parties competing or negotiating with an issuer. Issuers make calculated decisions about the benefits of becoming a reporting issuer, and the degree of public disclosure about the details of their business is a key factor in this determination.

   The public disclosure of the identities of the directors, executive officers, control persons and promoters of private issuers raises similar concerns. Although disclosure to the commissions may assist in oversight of the market, public disclosure is not necessary. Although this information may be important to the investors in the particular transaction, obtaining such information is the responsibility of the investor in the course of their due diligence relating to the issuer prior to making the investment. There is no compelling reason that the names of such individuals holding office in a private issuer be disclosed to the public.

   The details regarding compensation in section 8 should not be contained in the part of the form that is made public. We understand that this information may be useful to the regulators, as indicated in the Notice, however, given the

competitive nature of this information, we believe it should be contained in Schedule 2 only.

3. **The Proposed Report would require information about the issuer's size by number of employees, size of total assets or, for investment funds, net asset value. Are there other metrics that would be more appropriate to assess the issuer's size? Do the pre-selected ranges compromise sensitive financial or operational information about non-reporting issuers that participate in the exempt market?**

   The type of information described above, including the pre-selected ranges are appropriate for reporting issuers, in that they are consistent with existing reporting requirements. However, as noted above, disclosure of this information by private issuers has the potential to compromise their status vis a vis their competitors, or those with whom they negotiate in relation to any number of transactions. The type of information that is required to be revealed to the public or others in the industry by private issuers should be a matter determined by the issuer on a case by case basis, depending on the specific circumstances of the business interaction. Requiring non-reporting issuers to reveal this type of information to the securities commissions may deter issuers from accessing the exempt market in Canada.

4. **The Proposed Report would require issuers, other than investment funds, to use the NAICS codes to identify their primary industry. As noted above, using a standard industry classification is intended to provide securities regulators with more consistent information on the industries accessing the exempt market and to facilitate more direct comparison to other statistical information using the same classification, such as reports from Statistics Canada. Would the application of NAICS present challenges for issuers? Are there alternative standard industry classification systems that may be more appropriate? If so, please specify.**

   Although the NAICs codes may be publicly available, it should be recognized that they are far from precise and that certain firms may not fit into pre-existing categories or overlap several categories.

5. **The Proposed Report would not require: (i) foreign public issuers and their wholly owned subsidiaries, or (ii) issuers that distribute eligible foreign securities only to permitted clients, to disclose information about their directors, executive officers, control persons and promoters. Do these carve-outs provide appropriate relief to issuers that are either subject to certain foreign reporting regimes or have their mind and management outside of Canada? If not, please explain.**

The proposed carve-outs are appropriate in that investors in many foreign jurisdictions will not undertake investments if such information is disclosed. The carve-outs do not compromise investor protection.

6. **The Proposed Report would require public disclosure of the number of the issuer's voting securities owned or controlled by directors, executive officers, control persons and promoters of certain non-reporting issuers, and the amount paid for them. This information is intended to provide valuable information for investors and increase transparency in the exempt market. Would disclosure of the percentage of voting securities owned or controlled by directors, executive officers, control persons and promoters of the issuer also be useful information for potential or existing investors?**

   This detailed information may be difficult and time consuming to collect in the case of private issuers with a significant history. Consistent with our previously articulated position, revealing this type of information to the public where an issuer is not reporting, raises concerns about confidentiality and competitive matters. Investors participating in an exempt offering are free to negotiate access to this information if it assists them in making an investment decision. Disclosing this information to the public after the investment decisions have been made, and the deal is completed, does not advance investor protection, nor does it provide investors with useful information, and may raise privacy concerns. In addition, the requirement to reveal this type of information to the securities commissions may deter issuers from accessing the exempt market in Canada.

   With respect to disclosure of compensation information related to insiders, registrants or other individuals, it is uncertain how this would enable investor to make better investment decisions. If the objective is to assess the prevalence of financial relationships among connected persons and issuers, compensation information should be moved to Schedule 1 to provide a balance between protecting the individual's privacy versus achieving the objective.

7. **The Proposed Report would require the disclosure of the residential address of directors, executive officers, control persons and promoters of certain non-reporting issuers in a separate schedule that would not be publicly available. Do you have any concerns regarding the requirement to disclose this information to securities regulators?**

   This disclosure is not problematic if it is only available to the regulators and not publicly disclosed.

8. **The information collected in the Proposed Report will be publicly available with the exception of the information required in Schedule 1 and Schedule 2. Does the Proposed Report appropriately delineate between public and non-public information? In particular:**

   a. **Would non-reporting issuers have specific concerns regarding the public disclosure of this information and, if so, why?**
   See our responses above

   b. **Is the publication of firm NRD number, which will help identify the involvement of a registrant in a distribution for compliance purposes, appropriate?**

   The public disclosure of a firm's NRD number raises cybersecurity concerns, in that it may provide information not previously publicly available that may assist potential cybercriminals in gaining access to firms' systems. There is no clear investor protection reason for this disclosure, and given the potential negative implications, it should be kept private.

9. **In an effort to simplify and streamline the exempt market reporting regime for market participants, the Proposed Amendments would create one form for all issuers, with some items applicable only to non-investment fund issuers and some items applicable only to investment fund issuers. Should we require a specific form for investment fund issuers, as proposed in the March 2014 Proposals and, if so, why?**

   We support the creation of a single form, but request that close attention be paid to the format and design, so that it is very clear which sections would apply to a particular issuer. To this end, we suggest that the form permit for dynamic entry, so that the inapplicable sections will not be available for entry after a certain issuer type is chosen.

10. **The Proposed Report would change the deadline for investment funds reporting annually to within 30 days after the calendar year-end (i.e. by January 30), rather than 30 days following their financial year-end. The purpose of this proposed change is to improve the timeliness and comparability of information from all investment fund issuers, regardless of their different financial year-ends. Would this proposed change present a significant burden for investment fund issuers?**

    In light of the increased administrative demands required to gather the additional information requested by the Proposed Report, we would propose an extended filing deadline of 60 calendar days from year-end.

11. **The Proposed Report includes Schedule 1 and Schedule 2, which would be required to be filed in electronic format. We anticipate that filing in electronic format will improve our information collection, enhance our ability to conduct compliance and policy analysis, and potentially lead to technological efficiencies for filers. If we were to provide templates in Excel format, would there be any specific technological barriers that would be burdensome for filers to overcome? If so, are there other formats that would be less burdensome and would accomplish the same goals of filing in the proposed format?**

    The IIAC does not have a position on this issue.

Other Issues to be Considered

In Schedule 2, the Proposed Report requires the issuer or underwriter to identify the precise exemption relied upon, including the section, subsection and paragraph of the exemption. This is reasonable, and will assist in tracking the use of exemptions. However, the Proposed Report appears to permit the issuer or underwriter to only identify one category as opposed to all categories for which a purchaser is eligible, rather than the current system of checking off all of the exemptions that apply. In situations where it appears that the investor fits into several exemption categories, this forces the issuer or underwriter to choose only one that applies, which would result in incomplete information about the frequency that an exemption is used, and may raise question about why one exemption was chosen for disclosure over another.

It is appropriate to permit issuers and underwriters to disclose more than one exemption that is appropriate for the particular investor in such circumstances.

The Proposed Report also places a burden upon issuers and underwriters to provide the personal email addresses of such purchasers and to identify them as a securities registrant. While this information might be useful to the CSA to further its future policy development, we are concerned that its collection will detract from the longer-term stated goal of reducing regulatory burden upon market participants.

Thank you for considering our comments. If you have any questions, please do not hesitate to contact me.

Yours sincerely,

Susan Copland