Borden Ladner Gervais LLP
Scotia Plaza, 40 King Street W
Toronto, ON, Canada M5H 3Y4
T 416.367.6000
F 416.367.6749
blg.com

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

Delivered to:

Secretary
Ontario Securities Commission
20 Queen Street West
22nd Floor
Toronto, ON M5H 3S8
Fax: 416-593-2318
comments@osc.gov.on.ca

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
consultation-en-cours@lautorite.qc.ca

Dear Sirs/Mesdames:

Re: CSA Notice and Request for Comment

Proposed Amendments to National Instrument 45-106 *Prospectus Exemptions* (NI 45-106) relating to Reports of Exempt Distribution – published for comment August 13, 2015

We are lawyers in the Securities & Capital Markets practice group of Borden Ladner Gervais LLP and we work with many reporting and private issuers, as well as registrants and investment fund managers that have investment funds, the securities of which are distributed under various applicable prospectus exemptions. We have closely followed and commented on the numerous changes to the exempt market regime proposed and implemented in the last few years. We are pleased to provide our views on the most recent proposals for changes to the Reports of Exempt Distribution that were published for comment on August 13, 2015. Given that the shorter comment period of 60-days came at the end of the summer period when many of our clients and lawyers were away and fell during the very busy fall season, we hope that you will consider our comments notwithstanding that we are providing them after the end of the comment period.

We note that one of the authors of this letter, Michael Burns, is the Chairman of the Alternative Investment Management Association (AIMA) and although we do not necessarily repeat all the comments made in their letter of October 19, 2015, we do endorse the sentiments and comments made in their letter.

Our comments should not be taken as the views of BLG, other lawyers at BLG or our clients.

1. Support for One Consolidated and Harmonized Report

We very much support the CSA's proposal to harmonize the requirements such that one harmonized Report would be used for all filings of exempt trades in each of the applicable provinces and territories. In our view, there should be no local requirements in any jurisdiction as it applies to Reports of Exempt Distributions. We consider that this is critical for the continued efficiencies of the Canadian exempt markets and to allow for ease of compliance by the applicable issuers, their advisors and their service providers.

2. Support for the Filing Deadline for Investment Funds

We support the CSA's proposal for an optional annual filing by investment funds, with the deadline for that filing being tied to a calendar year end. This is preferable to the current fiscal year deadline, as we consider this new deadline will enhance compliance and provide a common date for the collection of information by the CSA.

3. Need for a Harmonized Filing System

We continue to urge the CSA to adapt a harmonized filing system – one that may be used by issuers across the country, rather than the three separate approaches that we understand will be required for filings of the new form assuming the proposed amendments to National Instruments 13-101 and 13-102 published for comment in June 30, 2015, come into force.

We were unable due to time constrains to comment on the above-noted June 30 proposals that would require Reports to be filed on SEDAR, but we wish to caution the CSA on using SEDAR for such purposes at this time, without significant modification to the SEDAR system, which is overloaded, difficult to navigate and use, and was never developed for "private" filings of this kind. Using this system will be particularly problematic for non-Canadian issuers who have no familiarity with it and hence may factor in the perceived complexities in deciding whether to offer securities in Canada. For all issuers, it will increase the costs to carry out private placements. There are no details provided on the costs for non-reporting issuers to use the SEDAR system and we believe this is critical information to be provided to the exempt market place before the June 2015 proposals are adopted.

We do not see any public policy rationale for the CSA to require issuers to use three different filing methods (one for Ontario, another for British Columbia and another for the rest of Canada) and we urge the CSA to develop a user friendly, secure method of one-stop filing (without resorting to the use of SEDAR). We also believe that a single filing method will enable the CSA to aggregate the information it collects and to use that information in a more meaningful way.

4. Need for a Harmonized Fee Structure

Along with the need for a harmonized form of Report and filing system, we recommend that the CSA develop a harmonized and rationalized fee structure. For the most part, the various members of the CSA simply accept the filed Reports and (to our knowledge) do not review or comment on the information. In our view, the fee structures adopted by the various provinces should reflect the level of services or activities provided by the various applicable regulators.

5. Policy Rationale for the Level of Detail Required in the Proposed Report

We provide our comments on the various elements of the proposed Report below, but note from an overall perspective that the level of detail required by the proposed Report seems very excessive and unnecessary. We do not see the benefits to the capital markets that would outweigh the increased burdens on issuers, investment fund managers, dealers, underwriters, portfolio managers, advisors and service providers in having to collect and provide the information requested. We are also concerned about the level of information required about clients/investors in the exempt markets – what will the CSA do with this detailed information and where will this information be stored? These latter questions are not answered in the CSA publication.

The CSA have suggested that the various regulators need the level of detailed information proposed by the new Report so that the regulators can understand the exempt markets and can respond to international surveys about the exempt markets. We question whether this is an appropriate policy objective that will outweigh the increased complexities and increased compliance costs that will be absolutely inherent in the proposed Report.

Given the penalties that will exist for inaccurate completion of the Report (the bold faced capitalized statements that it is an offence to make a misrepresentation in the Report), we consider it vital that the CSA undertake further industry consultations to reconsider the need for all of the information and determine what further streamlining can be done. Without this, we fear that many issuers will be off side the requirements, despite their best efforts, simply due to the complexities inherent in obtaining and inputting all the required information in short periods of time.

We also question how the various members of the CSA will work to tie together the information filed in the Reports in the various jurisdictions to be able to provide a pan-Canadian view of the exempt markets. This issue is not addressed in the proposals.

The complexities of the proposed Report warrants a longer time deadline for filing – for investment funds, 60 days, rather than 30 days from calendar year end.

6. Specific Comments on Elements of the Proposed Report

We have the following detailed comments on the various elements of the proposed Report.

(a) Issuers are directed to National Instrument 81-106 to determine whether or not they are investment funds. We know that the staff of the Ontario Securities Commission have been refining their views on which issuers are "investment funds", which includes holding that private equity or other alternative-type funds, where "control" is taken over any of the funds' investments are not investment funds, even when those funds have always been structured as investment funds and have been treated previously by the regulators as investment funds. This is causing confusion on the part of our clients and we disagree with this policy direction, particularly without public consultation. We urge the CSA to update the Companion Policy to NI 81-106 if this is to be the uniform position and to publish revisions to NI 81-106 for public comment.

The implications of whether a collective investment scheme (CIS) is an "investment fund" or not has broader implications than which parts of the proposed Report are to be completed, but it also has implications as to how an issuer is to complete the Report and when it is to be filed. Many

of the questions that apply to non-investment fund issuers, do not apply well to CIS that are not considered to be investment funds under NI 81-106. For example, Item 5 is not to be answered by an investment fund, but the questions are equally inapplicable and difficult to answer by a CIS that may not fit within the definition of "investment fund". Our recommendation is that the CSA adopt a more expansive meaning of "investment fund" for the purposes of completing the proposed Report and filing it (i.e. all CIS should be permitted to adopt the annual filing scheme – and not be forced to comply with the timing of filing the report). Item 5 will not work well for any CIS, but rather Item 6 will provide more meaningful information to the CSA. We urge the CSA to provide further clarity on this point, otherwise there will be many CIS that will not be able to provide the information requested and therefore the CSA will be provided with imperfect and incomplete answers.

(b) Item 6 (b) requires information about the "type" of investment fund, as well as whether it invests primarily in other investment funds. We feel more guidance is necessary on these points – what does the CSA mean by "primarily" – for example, is this what is built into the fund's investment objectives? Many funds invest in other investment funds as part of their investment strategies – it seems to us that the "box" would be completed positively only for those funds who have as part of their investment objectives fund of fund investing.

(c) Item 7 – Schedule 2 seems excessively detailed, particularly as it is required for "each purchaser". We feel the CSA should reconsider this level of disclosure for each purchaser, particularly since public disclosure may occur under Freedom of Information legislation. We question the relevance of all the personal information about each client that the CSA is requesting, including personal email addresses and whether the purchaser is a securities registrant. What will the various regulators do with this information and what is its relevance? And why does the CSA need to have the precise details of the category of accredited investor (the subparagraph relied upon) for each purchaser?

(d) We feel Schedule 2 should be rethought generally; however we are strongly opposed to the requirement that a portfolio manager investing on behalf of discretionary managed accounts has to provide the information about each of its clients to the degree proposed. It is rather mind-boggling when thinking of this level of information that has to be provided to the CSA for a portfolio manager that is managing a number of accounts, each of which invests in one or more of the same investment funds (for example). The sheer length of the report will be prohibitive and such detailed disclosure about the beneficial owner of the managed account does not appear to be necessary. The owner of the managed account does not make decisions with respect of the investments – the portfolio manager does. The portfolio manager is deciding on the exempt trades –

and not the owner of the managed account. An approach that requires more high level, summary information would appear to us to be in order.

(e) Schedule 2 also requires that a fund disclose purchases per distribution date, not simply the cumulative annual purchases of an investor. If an investor, or a portfolio manager on behalf of a managed account, purchases units of the fund multiple times, a separate entry will be required for each purchase. Is this what the CSA intends? If so, why is this information relevant and what will the CSA do with this information?

(f) What is the relevance of the compensation details required by Part 8? And how does this fit with the usual compensation structures of investment funds? If there are trailing commissions paid (for example), we assume that the disclosure would be of the total amounts paid to the firm – and not the amounts paid to individual representatives. Before this section is finalized, we urge the CSA to explain why this information is relevant and requested and what it will be used for.

7. Transition Provisions

The proposed transitional provisions provide that an investment fund that files on an annual basis and has a financial year-end other than December 31, would be expected to file the proposed Report within 30 days after their financial year-end for so long as the end of the calendar year that the proposed amendments come into force. This would require such funds to file twice for one calendar year. For example, if the proposed amendments come into force in say August 2016 and a fund has a year-end of September 30, 2016, the fund would need to file a Report for the period October 1, 2015 to September 30, 2016 and another report for the period October 1, 2016 to December 31, 2016. We urge the CSA to permit investment funds in this situation to be able to file one aggregate report as of the next new filing deadline. This would mean in the situation above, that the fund would file an aggregate report for the period October 1, 2015 to December 31, 2016. This would alleviate the additional legal and compliance costs that would otherwise be imposed on such investment fund issuers in connection with preparing two reports for the same calendar year.

The transitional provisions should recognize that some issuers will find it difficult to collect the new information for periods before the proposed amendments come into force and should provide for an exemption from having to provide the "new" information for trades that were completed prior to a date that is (at least) 90 days after the amendments come into force. Otherwise the regulatory burdens (which will already be substantial) will be exponentially more difficult and acute. Issuers, dealers and other service providers will need time after the amendments come into force to ensure their systems are such that they automate the collection of the necessary data.

8. **Purpose of the OSC's Excel Spreadsheet filing of Exempt Distributions**

We note that the OSC, last week, released an Excel spreadsheet with a summary of reported exempt distributions, with OSC Staff Notice 45-714 *Summaries of Exempt Distribution Information.* It is not clear to us why this information is being published in the detail it is, and why it is necessary to have this information publicly available in a format that it can be "used, searched and analysed" by stakeholders. We recommend a clearer explanation of the purpose of this publication, as well how this information would change with the new proposed Reports (that is, what information would it contain?).

Thank you for considering our comments. Please contact any of the undersigned if you would like additional information or wish us to elaborate on our comments.

Yours very truly,

"Alfred Page"

Alfred Page
apage@blg.com

"Rebecca Cowdery"

Rebecca Cowdery
rcowdery@blg.com

"Ron Kosonic"

Ron Kosonic
rkosonic@blg.com

"Michael Burns"

Michael Burns
mburns@blg.com

"Jason Brooks"

Jason Brooks
jbrooks@blg.com

"Sarah Gardiner"

Sarah Gardiner
sgardiner@blg.com