

September 6, 2017

Without Prejudice
By E-mail

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
Fax: 416-593-2318
comments@osc.gov.on.ca

Me Anne-Marie Beaudoin
Corporate Secretary
Autorité des marchés financiers
800, rue du Square-Victoria, 22e étage
C.P. 246, tour de la Bourse
Montréal, Québec H4Z 1G3
Fax: 514-864-6381
consultation-en-cours@lautorite.qc.ca

Dear Sirs/Mesdames:

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

We submit the following comments in response to the Notice and Request for Comments published by the Canadian Securities Administrators (the “**CSA**”), other than the British Columbia Securities Commission, on June 8, 2017 with respect to proposed amendments (the “**Proposed Amendments**”) to National Instrument 45-106 (“**NI 45-106**”) and the report of exempt distribution set out in Form 45-106F1 *Report of Exempt Distribution* (the “**Report**”).

We have organized our comments below with reference to the proposed rule, policy or form to which the comments relate. All references to parts and sections are to the relevant parts or sections of the applicable rule, policy or form.

Thank you for the opportunity to comment on the Proposed Amendments. This letter represents the general comments of certain individual members of our securities practice group (and not those of the firm generally or any client of the firm) and are submitted without prejudice to any position taken or that may be taken by our firm on its own behalf or on behalf of any client.

1. General

We are generally supportive of the Proposed Amendments. We are of the view that the reduced regulatory burden that would result from the implementation of the Proposed Amendments would help in reducing some of the unnecessary barriers to exempt market activity in Canada.

As a general comment, however, we would suggest that the CSA consider whether the benefit of the information being requested is greater than the burden it may impose on filers, particularly based on the information collected since the implementation of the Report in 2016. As part of this assessment, we would suggest that the CSA consider whether certain of the required disclosure provides any real utility to the CSA. For example, Item 5 of the Report requires that filers identify the NAICS industry code that corresponds to the issuer's primary business. Compliance with this requirement requires filers to exercise a significant amount of judgment as there are often many NAICS codes that may apply to a particular issuer. As such, issuers in the same industry may not select the same NAICS code and the same issuer may be categorized in different ways for multiple distributions, depending upon who is completing the Report. There is no way to guarantee consistent classification of issuers' industries. We respectfully question whether such inconsistent data provides the CSA with any meaningful information about Canadian capital markets.

2. Purchaser Information

We respectfully suggest that the CSA consider including additional guidance in the Report as to how an issuer is to determine whether a distribution is considered to have taken place in a particular jurisdiction. Instruction 2 to the Report provides that issuers located outside of Canada who determine that a distribution has taken place in a jurisdiction of Canada are required to include information about purchasers resident in that jurisdiction only (i.e., foreign purchasers are not required to be included in the Report); However, similar guidance is not provided in the Report with respect to Canadian issuers who sell securities to non-Canadian purchasers. We understand that generally, if the issuer has a substantial connection to Alberta, British Columbia or Quebec and the issuer distributes securities to a purchaser outside the local province, such distribution is considered by the regulators to be a distribution in the local province and therefore that purchaser is to be identified in the Report. We understand this is not the case in Ontario. However, there still remains some uncertainty, and, based on our experience, mixed practice, in this regard. We urge the CSA to amend the Report so that information about non-Canadian purchasers is not required in Schedule 1, or, in the alternative, to provide concrete guidance as to when a non-Canadian purchaser should be included in the Report.

3. Certification

While we are supportive of the revisions to Item 10 of the Report, we would suggest additional language further clarifying that the individual certifying the Report is doing so on behalf of the filer and "not in his/her personal capacity".

4. Schedule 1 to Form 45-106F1 (Confidential Purchaser Information)

We strongly support the proposed change to Schedule 1 of the Report which would permit filers to select "NIPC" where a purchaser is a non-individual permitted client, rather than to provide the paragraph number in the definition of "accredited investor" in section 1.1 of NI 45-106 applicable to the purchaser. This amendment will significantly reduce the compliance burden associated with the Report. Based on our experience, we believe that the benefit of the information currently required by the Report (i.e., the category of accredited investor) does not outweigh the burden imposed on filers, particularly for foreign issuers accessing Canadian capital markets.

Similarly, we strongly support the Proposed Amendment to subsection f) of Schedule 1 to the Report which permits foreign issuers to omit information regarding whether a purchaser is an insider or a registrant for the same reasons noted above.

5. Item 7(g) Net Proceeds to the investment fund by jurisdiction

While not part of the Proposed Amendments, we would ask that the CSA consider revising the requirements of Item 7(g) of the Report. Based on our experience, the requirement to track and report net redemptions by province is a burdensome undertaking that requires a level of reporting that is onerous to most alternative fund managers, especially non-resident fund managers. In addition, we have found that some issuers consider such data to be highly confidential and commercially sensitive.

* * * * *

Thank you for the opportunity to comment on the Proposed Amendments. Please do not hesitate to contact any of the undersigned if you have any questions in this regard.

Yours truly,

Laura Levine,

on my own behalf and on behalf of

Ramandeep K. Grewal
D'Arcy Nordick
Darin R. Renton
Simon A. Romano