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September 27, 2017

VIA E-MAIL

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
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island
Nova Scotia Securities Commission
Securities Commission of Newfoundland and Labrador
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Yukon
Superintendent of Securities, Nunavut

Attention:
The Secretary
Ontario Securities Commission
20 Queen Street West
19th Floor, Box 55
Toronto, Ontario M5H 3S8
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: Canadian Securities Administrators Notice and Request for Comment – Proposed Amendments to NI 45-102 *Resale of Securities* (the "CSA Paper")

We are writing in response to the request for comment in the CSA Paper dated June 29, 2017. We appreciate the opportunity to comment on these important matters.

Invesco Canada Ltd. is a wholly-owned subsidiary of Invesco, Ltd. Invesco is an independent investment management firm dedicated to delivering an investment experience that helps people get more out of life. As of August 30, 2017, Invesco and its operating subsidiaries had assets under management of approximately US$906.7 billion. Invesco operates in 20 countries in North America, Europe and Asia.

Invesco Canada is registered as an Investment Fund Manager, an Adviser and a Dealer in Ontario and certain other provinces. Investment funds managed by Invesco Canada periodically subscribe for securities of non-reporting issuers under a prospectus exemption, and accordingly, we have run into many of the issues identified in the CSA Paper with respect to such offerings.

We are generally supportive of the CSA's proposal to simplify and streamline the resale rules applicable to Canadian purchasers of foreign securities acquired under a prospectus exemption. We believe that on the whole, the proposed rules strike the correct balance between protecting Canadian investors and facilitating fair and efficient capital markets. However, we believe that the draft rules as currently proposed may create certain unintentional difficulties, and we will suggest our proposed solutions in the body of this letter.

As stated in the CSA Paper, the policy rationale of section 2.14 of NI 45-102 is to facilitate certain trades in securities of a foreign market or foreign issuer with minimal connection to Canada, since restrictions on resale of such securities are not necessary to protect Canadian investors. However, the practical effect of this provision has been to force those institutional investors in Canada who wish to invest in these securities to obtain certain information from the foreign issuers (often under significant time pressure) in order to ensure that the applicable test can be met. A failure to satisfy the requirements of section 2.14 does not technically preclude such investors from subscribing for the securities, but has the effect of severely limiting the future liquidity of those securities.

The current rule is often impractical because, in our experience, not all foreign issuers are willing to provide assurances with respect to the percentage of their securities held by Canadians, leading to a loss of investment opportunities. In many instances, issuers are only inclined to provide qualified assurances, leading to unnecessary potential exposure on the part of investors, given the nature of the liquidity risk. On the other hand, the policy rationale of section 2.14 must not be diluted in the development of a new rule. Invesco believes that the proposed definition of foreign issuer adequately promotes the policy rationale of section 2.14, but does so in a less intrusive way, subject to certain comments we make below.

We agree with the CSA Paper that it is no longer appropriate to rely solely on the location of shareholders to determine whether there is, or ought to be, a causal connection to Canada, given the increased globalization of capital markets. In our view, the new definition of foreign issuer correctly makes the philosophical presumption that an issuer will not develop anything but a minimal connection to Canada where that issuer (a) is not incorporated in Canada, (b) has a majority of assets outside of Canada, and (c) has its controlling mind outside of Canada. For that reason, we believe that the proposed elements of the definition are appropriate, and are supportive of the repealing of section 2.14.

Incorporation

The proposed definition of foreign issuer requires that the issuer not be incorporated or organized under the laws of Canada or under a jurisdiction in Canada. We agree, and do not see a circumstance under which an entity incorporated or organized in Canada should be able to fall within the definition. This portion of the test will also be easy to verify and therefore we have no concerns.

Location of assets

With respect to location of assets, we believe that generally, it would not be unduly difficult to determine whether the majority of the consolidated assets of the issuer are located in Canada. While many issuers do not report locum of assets on their consolidated balance sheet, it would be rare for an issuer to not adequately disclose its connection to Canada if it held more than half of its assets here. We emphasize that given the nature of financial reporting in general, there may be circumstances where it would be necessary or prudent to obtain written confirmation by the issuer that it would meet this part of the test, so this is not a perfect solution if the goal is to eliminate the need for such disclosures to be made. However, compared to information requests relating to its shareholder base, we expect that it would generally be much easier for an issuer to represent that not more than 50% of its assets are located in Canada, and so the practical impact of this proposal is net positive.

Controlling Mind

With respect to location of controlling mind, we believe that determining the ordinary residence of the management team is the correct approach. However, under the proposed definition of "executive officer", it will be very difficult for investors to satisfy themselves as to compliance with the rule. This difficultly arises out of a disconnect between the definition and the disclosure that will likely be made to the investor with respect to the management team, under the issuer's offering documents or continuous disclosure documents.

We note that the proposed definition of "executive officer" is identical to the definition in NI 51-102 – *Continuous Disclosure Obligations*, which imposes a requirement on reporting issuers in Canada to report the compensation of NEOs, or named executive officers, in disclosure documents. The distinction that should be made, however, is that under NI 51-102, it is the *issuer* that must analyze and decide who is a NEO or which individual falls within the definition of executive officer (and therefore, which names are disclosed), not the investor,

who may not have access to this information other than through the issuer's disclosure. To require that the investor somehow make this determination, as the proposed definition does in NI 45-102, is simply not practical. Indeed, even under Canadian disclosure requirements, it is unlikely that investors can ascertain the residence of each relevant individual under the current definition. As such, it would simply not be possible for an investor to confirm this information without obtaining representations from the issuer, which is precisely what the CSA Paper is aiming to avoid. We therefore urge the CSA to consider a much narrower definition of the term "executive officer" for this reason. Ideally, the regulatory requirement for determining residency should be restricted to those individuals that are named in public disclosure documents. At the very least, reference to individuals with a 'policy-making function' should be deleted, since there is no way for an investor to determine who these individuals are if they are not specifically named in the issuer's disclosure.

Potential timing issue

The proposed definition of "foreign issuer" will also lead to a potential timing issue. Disclosure of consolidated assets typically occurs only once per year, with potential quarterly updates in certain jurisdictions. Similarly, with respect to location of controlling mind, disclosure of the directors and officers tends to only occur only once per year (and we note that not all foreign jurisdictions maintain Canada's high quantity continuous disclosure requirements, and as such, a change to the management team would not necessarily be disclosed on a timely basis). So while we agree that using the date of distribution provides certainty for investors as to whether the exemption will exist, in our view, ascertaining this with sufficient certainty as at the distribution date only will necessitate, in many instances, the investor having to receive representations from the issuer. As such, the main advantage to repealing and replacing section 2.14 will be inadvertently lost.

As such, we would ask that the CSA consider amending the proposed section 2.14.1 to allow for the foreign issuer status test to be determined as at the date of distribution or the date of the last applicable public disclosure regarding part (b) and (c) of the definition, provided that a reasonable period of time has passed since that information has been released. For example, if a month prior to the distribution, disclosures were made publicly that confirm that a majority of consolidated assets were not located in Canada, we see little reason for having to reestablish this fact as at the distribution date, given the policy rationale. We appreciate that this suggestion may lead to its own challenges, but those challenges can be mitigated by having a short disclosure window. Alternatively, we would be supportive of a definition that allows investors to determine foreign issuer status either at the time of distribution or the date of the trade. The option to use the trade date allows the investors the luxury of subscribing for the securities while having the ability to confirm foreign issuer status at a later date, if necessary, so that the liquidity of the securities is not forever 'locked' due to uncertainty.

Thank you for providing us with the opportunity to comment on this important initiative. We would be pleased to discuss our comments further should you so desire.

Yours very truly,

Invesco Canada Ltd.

Shalomi Abraham
Assistant Vice President & Senior Legal Counsel