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BY EMAIL

Alberta Securities Commission
Autorité des marchés financiers
Financial and Consumer Affairs Authority of Saskatchewan
Financial and Consumer Services Commission (New Brunswick)

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and

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and

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Dear Sirs/Mesdames:

Re: Multilateral CSA Notice of Publication and Request for Comment - Proposed Amendments to National Instrument 45-106 *Prospectus and Registration Exemptions* Relating to the Offering Memorandum Exemption and in Alberta, New Brunswick and Saskatchewan, Reports of Exempt Distribution (the “Notice”)

The Canadian Advocacy Council¹ for Canadian CFA Institute² Societies (the CAC) appreciates the opportunity to comment on the Notice and wishes to provide some general comments and respond to the following specific questions set out in the Notice.

¹The CAC represents the 13,000 Canadian members of CFA Institute and its 12 Member Societies across Canada. The CAC membership includes portfolio managers, analysts and other investment professionals in Canada who review regulatory, legislative, and standard setting developments affecting investors, investment professionals, and the capital markets in Canada. See the CAC's website at <http://www.cfasociety.org/cac>. Our Code of Ethics and Standards of Professional Conduct can be found at <http://www.cfainstitute.org/ethics/codes/ethics/Pages/index.aspx>.

We support regulatory measures designed to assist capital raising needs of Canadian issuers while strongly emphasizing investor protection. Investor protection in the exempt market is best enhanced by providing clear risk disclosures, taking some steps to verify eligibility to participate in the market, and implementing a best interest standard on all registrants.

We remain of the view that it is important, to the extent possible, to harmonize the capital raising exemptions across all Canadian jurisdictions. It is becoming increasingly confusing for issuers, advisors, dealers and investors to determine whether or not a prospectus exemption is available to an issuer or purchaser in a particular province or territory, which has a negative impact on the efficiency of our markets.

1. Under the current framework in Alberta, Québec and Saskatchewan, both individual and non-individual investors are subject to the \$10,000 annual investment limit if they do not meet the definition of an eligible investor. Should non-individual investors, such as companies, be subject to the \$10,000 limit if they do not qualify as an eligible investor? Please explain.

We do not believe there is a principled reason to distinguish between non-individual investors and individual investors who do not qualify as an eligible investor. We understand that the \$10,000 limit is one investor protection measure utilized to mitigate the fact that securities are distributed in the absence of a prospectus to non-eligible investors, and those concerns are equally applicable to non-individuals such as small, closely held corporations. It is also possible that entities could be used as a means to circumvent the restrictions, and thus the annual investment limit should apply to those entities as well.

2. Are there circumstances where it would be suitable for an individual eligible investor who is not an accredited investor and not eligible to invest under the FFBA exemption to invest more than \$30,000 per year under the OM Exemption? If so, please describe them.

It may be appropriate for a retail security holder to invest more than \$30,000 per year under the OM exemption, based on that individual's personal financial circumstances, current portfolio, investment objective, time horizon and risk tolerance level. Conversely, \$30,000 may be too high for an accredited investor with a smaller portfolio and low risk tolerance. Simply being an accredited investor is not in all cases a proxy for investor sophistication. We do not believe that possessing investable assets above a certain threshold implies sophistication, lottery winnings and inheritances being just two examples of how that threshold could be reached by unsophisticated investors. We do not believe that either an asset test or an income test is sufficient to determine which investors have better access to

² CFA Institute is the global association of investment professionals that sets the standard for professional excellence and credentials. The organization is a champion for ethical behavior in investment markets and a respected source of knowledge in the global financial community. The end goal: to create an environment where investors' interests come first, markets function at their best, and economies grow. CFA Institute has more than 119,000 members in 147 countries and territories, including 112,000 CFA charterholders, and 143 member societies. For more information, visit www.cfainstitute.org.

information and are sophisticated enough to not require as much protection as others.

4. Investors who do not qualify as eligible investors based on net income or net assets can qualify as eligible investors on the basis of advice from a registered investment dealer. In what circumstances do investors actually seek and receive advice from a registered investment dealer? Does this introduce any complications or difficulties?

While investors may seek and receive advice from registered investment dealers in connection with privately placed securities, such dealers would only be responsible for ensuring that their suitability, KYC and KYP obligations are fulfilled. We wish to stress the importance of implementing a statutory best interest standard on all registrants providing advice. We support the CSA initiative that is currently underway reviewing the best interest standard, and strongly support the implementation of such a standard including with respect to providing advice on privately placed securities. Such a standard would help ensure that an investment under the OM exemption is in fact in a client's best interests, and would help mitigate concerns relating to the ability of an investor to qualify as an eligible investor.

5. The eligible investor definition includes persons that have a net income of \$75,000 and persons that have net assets of \$400,000. These income and asset thresholds currently apply equally to individual and non-individual investors, such as companies.

b. Should the net asset amount exclude the value of the principal residence for individual investors? If so, should the \$400,000 net asset threshold be lowered as a result?

The net asset amount should exclude the value of the principal residence for individual investors, as such assets are illiquid. If the initial \$400,000 investment was intended and initially thought only to include liquid investments, then the threshold can remain as is. However, if it was recognized that the limit also included illiquid assets but now only liquid assets are intended to be included in the definition, the net asset threshold can be lowered as a result.

11. Should non-individual investors (e.g., companies or trusts) be required to sign a risk acknowledgment form? Please explain.

Non-individual investors should be required to sign a risk acknowledgment form. We are of the view that one of the methods by which investor protection in the exempt market is best enhanced is by providing clear risk disclosure. There is no principled reason to exclude non-individual investors from the potential benefits of requiring them to acknowledge the specific risks of a private placement. The primary sources of risk of a private placement include the illiquid nature of the securities as well as the absence of full, true and plain disclosure, which can be acknowledged in the risk statement. It would enhance investors' understanding of risk if the protections foregone by not using a prospectus were similarly explicitly listed in the risk statement for exempt securities.

We believe that in order to assist investors to determine the suitability of any particular investment, it would be beneficial if an investor was required to specify on the risk acknowledgement form whether the investment represented a relatively small (e.g. up to 10%) percentage of the investor's net assets (excluding their primary residence). Requiring an investor and their advisors to specifically turn their minds to the investor's entire financial position may help determine whether additional scrutiny of the particular investment is warranted and help remind them of the potential risk they are accepting.

We are also of the view that the risk acknowledgement form would be enhanced if the investor was required to identify whether or not the registrant, if any, that was involved in the trade recommended the investor borrow money for purposes of making the investment.

12. Should "permitted clients", as defined in National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Obligations be required to sign a risk acknowledgement form? Please explain.

As set out in our response to #11 above, we believe that all investors purchasing securities using the OM exemption should be required to sign a risk acknowledgement form. We do not believe that any particular threshold of wealth or income implies sophistication or lesser need for protection.

17. Should New Brunswick restrict the amount an investor can invest under the OM Exemption? Does this restrict capital raising opportunities in New Brunswick? Does this enhance investor protection?

In the interests of harmonizing the OM Exemption among jurisdictions, we believe New Brunswick should adopt the same restrictions as the other participating jurisdictions.

Concluding Remarks

We thank you for the opportunity to provide these comments. We would be happy to address any questions you may have and appreciate the time you are taking to consider our points of view. Please feel free to contact us at chair@cfaadvocacy.ca on this or any other issue in future.

(Signed) *Ada Litvinov*

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Chair, Canadian Advocacy Council