December 16, 2013

British Columbia Securities Commission
Alberta Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
Manitoba Securities Commission
Autorité des marchés financiers
Financial and Consumer Services Commission (New Brunswick)
Nova Scotia Securities Commission
Prince Edward Island Securities Office
Office of the Yukon Superintendent of Securities
Office of the Superintendent of Securities, Government of the Northwest Territories
Legal Registries Division, Department of Justice, Government of Nunavut

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and

The Secretary
Ontario Securities Commission
20 Queen Street West
22nd Floor
Toronto, Ontario M5H 3S8
Email: comments@osc.gov.on.ca

Dear Sirs/Mesdames:

Re: Multilateral CSA Notice 45-312 *Proposed Prospectus Exemption for Distributions to Existing Security Holders* ("MI 45-312")

The Canadian Advocacy Council[1] for Canadian CFA Institute[2] Societies (the CAC) appreciates the opportunity to comment on the proposed MI 45-312.

[1]The 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,

As an introductory comment, the CAC is supportive of regulatory measures designed to support capital raising by issuers while balancing investor protection considerations. We believe it is important that, to the extent possible, the capital raising exemptions be harmonized across all Canadian jurisdictions. As it is likely that a TSXV listed issuer would be a reporting issuer across the country, it will be confusing, as well as inequitable, for investors in Ontario and Newfoundland and Labrador to be ineligible to use a new prospectus exemption, if adopted. In addition, in the event the prospectus exemption is permanent in some jurisdictions (if adopted by rule), but expires in other jurisdictions (because the blanket order is not extended), it will lead to additional disharmony in various Canadian jurisdictions in the future.

We are also concerned that there may be discrepancies in the practical application of the contractual rights of action for any misrepresentation in an issuer's continuous disclosure record and the statutory secondary market civil liability provisions that would apply to an investor investing under the proposed exemption in Alberta, Quebec and New Brunswick. Harmonizing the exemptions and the application of the statutory rights of action would simplify the capital raising process for issuers, and assist issuers and prospective investors in confirming eligibility and ramifications for participation in an exempt offering that occurs in more than one jurisdiction.

The CAC wishes to comment on following specific consultation questions.

2. Should the proposed exemption be available to issuers listed on other Canadian markets?

We do not believe there is a principled reason to exclude issuers listed on other Canadian markets from being able to utilize the exemption provided that those markets require a robust disclosure regime. If one of the reasons for the exemption is to permit issuers to raise capital without the cost of preparing supplemental disclosure documentation on the assumption that sufficient protection is available to existing investors in the issuer, this applies to issuers on other Canadian markets as well. We note however, that given the proposed $15,000 acquisition limit per investor, it is unlikely that the exemption would be attractive to issuers listed on more senior markets.

3. Investors will only be able to invest $15,000 in a 12-month period unless they obtain advice from a registered investment dealer. Is $15,000 the right investment limit?

As noted in the request for comments, retail investors are not limited to investing any particular amount when purchasing securities of a TSXV listed issuer on the secondary market. As a result, the $15,000 investment limit may not be a meaningful limit. We would suggest instead that an

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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.

[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 113,000 members in 140 countries and territories, including 102,000 CFA charterholders, and 137 member societies. For more information, visit http://www.cfainstitute.org/.

aggregate limit be imposed on an issuer basis, restricting the amount that an issuer could raise using the proposed exemption on an annual basis.

4. In what circumstances would it be suitable for an investor that is a retail security holder to invest more than $15,000 in a TSXV issuer?

As noted in our response to question #3, the proposed $15,000 investment limit appears to be an arbitrary limit. It may be appropriate for a retail security holder to invest more than $15,000 in a TSXV issuer for that investor's diversified portfolio, based on that individual's personal financial circumstances, investment objective, time horizon and risk tolerance level. Conversely, $15,000 may be too high for an investor with a smaller portfolio and low risk tolerance.

5. Do you agree that there should be no investment limit if an investor receives suitability advice from a registered investment dealer?

If a limit is maintained at the investor level, the limit should not be higher if a registered investment dealer is involved in the trade. While registered investment dealers have know-your-client, suitability and know-your-product obligations, the CAC wishes to stress the importance of implementing a statutory fiduciary duty on all registrants providing advice. We support the CSA initiative that is currently underway with respect to potentially imposing a fiduciary duty on registrants, and strongly support imposing a statutory best interest standard on registered dealers providing advice to clients, including advice on privately placed securities. Such a standard would help to ensure that an investment in privately placed securities is in fact in a client's best interest.

6. Do you agree that being a current security holder of an issuer enables an investor to make a more informed investment decision in that issuer?

A current security holder of an issuer theoretically would have greater motivation to engage in appropriate due diligence (or engage a professional adviser to do so) on their investee issuers and the method by which the company is operated. In addition, by holding securities of an issuer over a few reporting periods, an investor will have the opportunity to experience the volatility of the security's price on the exchange and the management's track record of disclosure and shareholder communications. It is particularly important for venture issuers that their continuous disclosure record be up to date and accurate, as inexperienced retail investors often purchase securities of venture issuers on speculation of large investment returns.

7. What is the appropriate record date for the exemption? Should it be one day before the announcement of the offering or should it be a more extended period? If you think it should be a more extended period, what would be the appropriate period of time?

We believe there is a reason to differentiate between a security holder that bought the securities one day before the announcement of the offering and a security holder that bought the securities some longer period before the announcement of the offering. An investor can not gain familiarity with an issuer by holding the securities for one day, and should be required, at a minimum, to hold the securities for one quarter such that they would have access to current, unaudited financial information about the issuer. We do not believe that the assumption of greater familiarity and due diligence for existing security holders is accurate for investors who held the security for one

day before the offering. We note that under the rights offering exemption, the exercise period for the rights must be open for at least 21 days after the date on which the rights offering circular is sent to security holders, providing security holders with some period of time to make another informed investment decision about the issuer based on current information.

We are also concerned that there is no minimum previous holding requirement in the proposed exemption. As a result, there is nothing preventing an investor from purchasing only a nominal number of shares prior to announcement in order to utilize the exemption. Such investor may not then have sufficient incentive to exercise the appropriate level of due diligence for a more substantial investment in the issuer. We believe that the exemption would be more effective at providing investor protection if the number of new shares an investor could acquire under the exemption were tied to investor's existing holdings of the issuer's securities.

8. We are currently proposing that the exemption be subject to the same resale restrictions as most other capital raising exemptions (i.e., a four month restricted period). However, there are some similarities between the proposed exemption and the rights offering exemption, which is only subject to a seasoning period.

a. Do you agree that a four month hold period is appropriate for this exemption?

Even though the exemption is similar to the rights offering exemption, we believe a four month hold period will be helpful to discourage retail investors from investing using the exemption for speculation purposes.

b. Should we require issuers to provide additional continuous disclosure, such as an annual information form?

While additional continuous disclosure is not necessarily required in order to provide investors with full disclosure with respect to an issuer's operations, we support the proposed requirement requiring either a statutory or contractual right of action in the event of a misrepresentation in an issuer's continuous disclosure documents, as well as the proposed requirement for an issuer to certify to investors in the subscription documentation that there are no undisclosed material changes or facts.

c. If we were to consider a seasoning period for this exemption, should we consider some of the restrictions that apply under a prospectus-exempt rights offering, such as "claw-backs" limiting insider participation?

It would be appropriate to impose an aggregate limit on the amount that an issuer could raise using this exemption in any twelve month period. The aggregate limit could be a set dollar amount, or, similar to the rights offering exemption, be limited to no more than 25% in the number or principal amount of the outstanding securities of the class to be issued upon the exercise of rights.

d. If securities offered under the exemption were only subject to a seasoning period, would there be a greater need to ensure investors are made aware of and have an opportunity to participate in the offering?

We believe that the requirement to issue a press release with the requisite disclosure about the offering is sufficient.

9. We have not proposed any conditions regarding the structure of the financing, i.e., minimum or maximum price, maximum dilution, or period in which an offering must be completed. We contemplate that the proposed financing would be conducted under the standard private placement rules of the TSXV which, among other things, allow pricing at a discount to market price. Is this appropriate or are there structural requirements that we should make a condition of the exemption?

In addition to the TSXV private placement requirements, we believe there should be an aggregate limit per issuer on using this exemption in any twelve month period, as specified in our response to question #8(c) above.

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