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**BY EMAIL**

British Columbia Securities Commission
Alberta Securities Commission
Financial and Consumer Affairs Authority (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
Registrar of Securities, Northwest Territories
Registrar of Securities, Yukon
Superintendent of Securities, Nunavut

Dear Sirs/Mesdames:

**Re: CSA Notice and Request for Comment on Proposed Amendments to National Instrument 45-106 *Prospectus and Registration Exemptions* Relating to the Accredited Investor and Minimum Amount Investment Prospectus Exemptions (the "Proposed Amendments")**

Please find below a few comments on the Proposed Amendments. These comments are not intended to be exhaustive. They only address three causes of concern.

## 1. Accredited Investor – Verifying Purchaser Status

The Proposed Amendments to Companion Policy 45-106CP *Prospectus and Registration Exemptions* (the "**Companion Policy**") confirm, as has always been the case, that the onus is on the person distributing securities to determine that an exemption from the prospectus requirement is available. However, the Proposed Amendments to the Companion Policy include the express statement that "It will not be sufficient to accept standard representations in a subscription agreement or an initial beside a category on the Form 45-106F9 *Risk Acknowledgement Form for Individual Accredited Investors* unless the person relying on the exemption has taken reasonable steps to verify the representations" and then provide examples of such "reasonable steps". While the

examples provided are not objectionable, the overriding statement that "It will not be sufficient to accept standard representations..." not only does not reflect the current standard in the industry, but it is also directly counter to that standard; in determining whether a potential investor meets the criteria of a particular prospectus exemption, almost all issuers rely upon "standard representations in a subscription agreement" and "an initial beside a category". Requiring issuers to take further steps to support reliance upon a particular prospectus exemption may be considered a violation of potential investors' privacy and consequently, result in lost investments. This proposed new requirement will also increase the cost of financings in reliance upon the accredited investor exemption (the "**AI Exemption**") as it will require more work on the part of issuers and their legal counsel to take these extra steps to collect sufficient additional evidence that the AI Exemption may safely be relied upon, particularly as the draft of the revised Companion Policy does not clearly or adequately indicate exactly how much evidence is required to "verify the representations".

Further, the Proposed Amendments to the Companion Policy also indicate that the issuer must determine whether the potential investor satisfies the criteria of the prospectus exemption "before discussing the details of the investment". Often, a potential investor will want to obtain information about the investment before disclosing its personal financial information. This timing issue could be resolved by changing the proposed wording in the Companion Policy to "before the distribution of the subject security".

As indicated in the CSA Notice, it is critical "to maintain or increase access to capital", not the converse. This Proposed Amendment to the Companion Policy will significantly hinder issuers' ability to raise capital and will increase the cost of raising capital under the AI Exemption. In particular, junior issuers, including start ups, may find it more difficult to raise capital to fund their businesses. The inability of these issuers to raise capital will likely have a negative impact on local economies. The detrimental effects this Proposed Amendment will have on the efficiency and accessibility of the capital markets far outweigh any potential increase in investor protection to be achieved by requiring these additional verification steps.

## 2. Accredited Investor - Form 45-106F9

In order for an issuer to rely upon the AI Exemption to issue securities, the Proposed Amendments require accredited investors ("**Accredited Investors**") who are individuals, excluding those who beneficially own financial assets having an aggregate realizable value exceeding $5,000,000, to sign a new risk acknowledgement form, being Form 45-106F9 (the "**Form**"). The Form is redundant, and consequently unnecessary, for issuers who already include substantially the same disclosure in their subscription agreements. However, it is recognized that the CSA may wish to address circumstances where issuers do not include such disclosure in their subscription documents, or simply require one

additional warning of the risks of such investment. As Accredited Investors are already required to sign several documents in order to subscribe for securities, the requirement to obtain their signature on one additional Form, while unnecessary, does not impose an insurmountable burden on issuers.

However, it must be noted that the Proposed Amendments require Accredited Investors who are individuals to sign the Form "at the same time or before that individual signs the agreement to purchase the security". This timing requirement is problematic. Often investors inadvertently fail to sign all of the documents they are required to sign in order to subscribe for securities, or complete them improperly or insufficiently, and the issuer is required to go back to the investor to have the documentation corrected and/or completed. Under the Proposed Amendments, if a prospective investor does not correctly complete and sign the Form "at the same time or before that individual signs the agreement to purchase the security", the issuer will be precluded from relying upon the AI Exemption. Requiring the Form to be signed prior to the distribution of the subject security would be more practical, without detracting from the intended benefit of the Form.

One further practical comment. The proposed Form is required to be on "one double-sided page". These days, the relevant documents are often circulated electronically, typically by email or facsimile, where "double-sided" is not an option. As no reason for this requirement is stated or evident, the requirement that the Form be on "one double-sided page" should be deleted and if considered necessary, replaced with a requirement that the Form be contained on no more than two pages.

## 3. Minimum Amount Exemption

The Proposed Amendments preclude issuers from relying upon the Minimum Amount Exemption (the "**MA Exemption**") to distribute securities to individuals.

The stated concern underlying this Proposed Amendment to the MA Exemption is that the current MA Exemption may sometimes result in investors investing more than they otherwise would and may encourage over-concentration in one investment for an individual investor. Apparently, the evidence has indicated that: "The majority of individuals invest between $150,000 and $200,000 when investing under the MA Exemption. When investors can choose how much to invest, they generally invest much less than $150,000. For example, most individuals invest $30,000 or less when investing under the AI Exemption." The MA Exemption does not force any potential investor to invest at least $150,000; that is their choice. If they want to invest less than $150,000, they must meet the criteria of another prospectus exemption; alternatively, they may choose not to invest.

Further, as indicated in the CSA Notice, in 2011, individuals investing under the MA Exemption represented less than 1% of the total invested by Canadians, so this concern is applicable to an extremely small segment of the Canadian investment environment. Although issuers may rely upon a number of other prospectus exemptions that are available to issue securities to individuals, such as the AI Exemption, the friends/family/business associates exemption and the offering memorandum exemption, this Proposed Amendment would unnecessarily eliminate a simple and cost-effective method to raise capital in the exempt market.

In this regard, there is nothing currently "broken" that needs to be "fixed". This Proposed Amendment is unnecessary and unnecessary changes should not be made.

**Other**

One Proposed Amendment that is not highlighted in the CSA Notice is the removal of the second paragraph in section 4.6 of the Companion Policy in respect of the isolated trade exemption. Again, there is no reason stated for this change. In the absence of a justifiable underlying rationale, this change should not be made.

Please feel free to contact the undersigned should you have any questions regarding these comments.

The foregoing represents the views of the undersigned and not necessarily the views of our firm.

Yours truly,

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