



June 10, 2014

**VIA E-MAIL**

<p>British Columbia Securities Commission P.O. Box 1042, Pacific Centre 701 West Georgia Street Vancouver, British Columbia V7Y 1L2</p> <p><u>Attention:</u> Leslie Rose, Senior Legal Counsel, Corporate Finance <u>E-mail:</u> <a href="mailto:lrose@bcsc.bc.ca">lrose@bcsc.bc.ca</a></p>	<p>Autorité des marchés financiers 800, square Victoria, 22e etage C.P. 246, tour de la Bourse Montreal, Quebec H4Z 1G3</p> <p><u>Attention:</u> Me Anne-Marie Beaudoin, Corporate Secretary <u>E-mail:</u> <a href="mailto:consultation-en-cours@lautorite.qc.ca">consultation-en-cours@lautorite.qc.ca</a></p>
<p>Ontario Securities Commission 20 Queen Street West, 22 Floor Toronto, ON M5H 3S8</p> <p><u>Attention:</u> John Stevenson, Secretary <u>E-mail:</u> <a href="mailto:comments@osc.gov.on.ca">comments@osc.gov.on.ca</a></p>	

Dear Sirs and Mesdames:

**Re: Proposed Amendments to the Accredited Investor and Minimum Amount Investment Prospectus Exemptions (the “Proposed Amendments”)**

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This comment letter is made by the Private Capital Markets Association of Canada (formerly, the Exempt Market Dealers Association of Canada) (**PCMA**) in response to the request for comments published by the Canadian Securities Administrators (the **CSA**) on February 27, 2014 in connection with the Proposed Amendments.

We thank you for the opportunity to provide our comments on these very important capital-raising exemptions in Canada.



## WHO IS THE PCMA?

The PCMA is a not-for-profit association founded in 2002 to be the national voice of exempt market dealers (**EMDs**), issuers and industry professionals in the private capital markets across Canada.

PCMA plays a critical role in the private capital markets by:

- assisting its hundreds of dealer and issuer member firms and individuals to understand and implement their regulatory responsibilities;
- providing high-quality and in-depth educational opportunities to private capital markets professionals;
- encouraging the highest standards of business conduct amongst its membership across Canada;
- increasing public and industry awareness of the private capital markets in Canada;
- being the voice of the private capital market to securities regulators, government agencies, other industry associations and the public capital markets;
- providing valuable services and cost-saving opportunities to its member firms and individual dealing representatives; and
- connecting its members across Canada for business and professional networking.

Additional information about the PCMA is available on our website at: [www.pcmacanada.com](http://www.pcmacanada.com)

## WHO ARE EXEMPT MARKET DEALERS?

EMDs are fully registered dealers who engage in the business of trading in securities to qualified exempt market clients. EMDs are subject to full dealer registration and compliance requirements and are directly regulated by the provincial securities commissions. The regulatory framework for EMDs is set out in National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (**NI 31-103**) and it applies in every jurisdiction across Canada.

EMDs must satisfy substantially the same "Know-Your-Client" (**KYC**), "Know-Your-Product", (**KYP**) and trade suitability obligations as other registered dealers who are registered investment dealers and members of the Investment Industry Regulatory Organization of Canada and mutual fund dealers and members of the Mutual Fund Dealers Association of Canada. NI 31-103 sets out a comprehensive dealer regulatory framework (substantially the same for all categories of dealer) which requires EMDs to satisfy a number of regulatory obligations including:

- educational proficiency;
- capital and solvency standards;



- insurance;
- audited financial statements;
- KYC, KYP and trade suitability;
- compliance policies and procedures;
- books and records;
- trade confirmations and client statements;
- disclosure of conflicts of interest and referral arrangements;
- complaint handling;
- dispute resolution;
- maintenance of internal controls and supervision sufficient to manage risks associated with its business;
- prudent business practices requirements;
- registration obligations; and
- submission to regulatory oversight and dealer compliance reviews.

EMDs may focus on certain market sectors (*e.g.*, oil and gas, real estate, mining or minerals, technology, venture financing, etc.) or may have a broad cross-sector business model. EMD clients may be companies, institutional investors, accredited investors (**AIs**) or investors who purchase exempt securities pursuant to an offering memorandum or another available prospectus exemption.

EMDs provide many valuable services to small and medium size enterprises (**SMEs**), large businesses, investment funds, merchant banks, financiers, entrepreneurs, and individual investors, through their ability to participate in the promotion, distribution and trading of securities, as either a principal or agent.

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## PCMA's COMMENTS ON THE PROPOSED AMENDMENTS

We appreciate the effort and extensive consultation the CSA have undertaken in connection with the accredited investor exemption (the **AI exemption**) and the minimum amount exemption (the **MI exemption**) under sections 2.3 and 2.10 of National Instrument 45-106 *Prospectus and Registration Exemptions* (**NI 45-106**).

Our comments are set out below.



## Accredited Investor Exemption

1. We support the CSA's decision that it will not change or index the income or asset thresholds within the AI exemption. As you know, any such change or indexing would have materially affected the use of the exemption and adversely impacted capital raising since approximately 90% of all capital raised in Canada is under the AI exemption.
2. The CSA proposes introducing Form 45-106F9 *Risk Acknowledgement Form for Individual Accredited Investors (Form 45-106F9)*. It is not clear why the CSA believes the information in Form 45-106F9 cannot be included in a subscription agreement. Nevertheless, we are pleased that the CSA proposes a single form that is nationalized and harmonized across Canada. However, we are concerned that the CSA will require investors to sign two original copies of Form 45-106F9 when a digital copy or electronic signature should suffice. We ask the CSA to reconsider this requirement and ensure it reflects current industry practices and does not unnecessarily inconvenience the very investors for whom it is intended.
3. We believe that a reasonable balance has been achieved in requiring individual AIs to sign Form 45-106F9 and agree that it should not be required for permitted clients who are able to waive suitability under subsection 13.3(4) of NI 31-103.
4. We are pleased the CSA has provided additional guidance on the AI verification requirements in the Companion Policy. However, we request additional guidance on the CSA's expectations involving the verification of AIs when there are multiple parties involved in a transaction (*e.g.*, an issuer and a dealer). We believe additional clarification is required by the CSA that discusses when, and if, an issuer can rely on a registrant's/dealer's KYC and suitability determinations.

For example, an issuer commonly does not receive specific information sufficient to determine that an investor is an AI, absent self certification in a subscription agreement, or any verification/representation by a dealer/registrar that a particular trade is suitable for an investor. Accordingly, we are concerned about the potential liability of an issuer for verifying that an investor is an AI when a dealer has assumed that role and is paid a commission for providing such services. If an issuer reasonably relies on a dealer to determine an investor's qualifications under a prospectus exemption, the issuer should not be liable under securities law for an illegal trade if the dealer was incorrect or their work was deficient. We submit that generally, reliance on a dealer by an issuer should be confirmed as reasonable reliance on



behalf of the issuer. Accordingly, we respectfully request clarification of such matters in the Companion Policy.

5. There has been industry concern on whether, and how, family trusts established by an AI could qualify under the AI exemption. We agree with the CSA's amendments to the definition of AI to specifically include family trusts as a type of AI.
6. We strongly support the Ontario Securities Commission's proposal to allow fully managed accounts to purchase investment fund securities in Ontario. We believe this harmonization is important to the efficiency and effectiveness of our capital markets for both dealers and portfolio managers.
7. We are concerned with the proliferation of multiple forms for reporting exempt distributions in Canada. We strongly encourage the CSA to adopt a single harmonized report of exempt distribution form across Canada. Having multiple versions of the form by jurisdiction imposes a significant cost and complexity burden on issuers and dealers that is unnecessary and not in the public interest.
8. Item 8 of Form 45-106F1 *Report of Exempt Distribution* and Item 9 of Form 45-106F6 *Report of Exempt Distribution* requires disclosure of commissions and finder's fees. We ask the CSA to clarify whether it requires the disclosure of the fees paid by an issuer to a registrant or unregistered party directly and indirectly, when part of that compensation and/or fee is paid to another registrant and/or unregistered finder who shares in that compensation. For example, if an issuer pays 8% commission to a dealer, that amount would typically be reported on the F1 or F6 report of exempt distribution. However, if 2% of that 8% is subsequently paid by the dealer to an unregistered finder, it is not clear if that amount also has to be reported. If so, we request that the CSA advise on the type of due diligence it expects an issuer to undertake to obtain this information from a registrant and/or unregistered finder and how it should be reported on the F1 and/or F6.
9. We continue to be very concerned that there is no central database that compiles statistical data on the information provided to CSA members through the various report of exempt distribution forms. The CSA's desire for evidence-based regulation would be significantly strengthened by ensuring access to a centralized database that is accessible, transparent and available across all jurisdictions. We note that only some CSA members publish annual capital raising reports of exempt distributions in their respective jurisdictions. We believe it is in the public interest for such information to be readily available and searchable by all capital



markets participants as well as the public. We appreciate there are cost concerns with implementing such a centralized database but, if necessary, we believe this could be mitigated by allowing the private sector to provide this service in co-operation with the CSA.

### **Minimum Amount Exemption**

1. We have no objection to the CSA's proposal to amend the MI exemption to restrict it to non-individual investors only. We believe this is a reasonable balance to address investor protection concerns associated with potentially unsuitable uses of the exemption to distribute securities to individual investors.

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We thank you for the opportunity to provide you with our comments on the Proposed Amendments and welcome any opportunity for further dialogue.

Yours very truly,

***Private Capital Markets Association of Canada***

*"Brian Koscak"*  
Chair

*"Geoffrey Ritchie"*  
Executive Director

cc: PCMA Canada, Board of Directors