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PORTFOLIO MANAGEMENT ASSOCIATION OF CANADA
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May 28, 2014

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Leslie Rose
Senior Legal Counsel, Corporate Finance
British Columbia Securities Commission
P.O. Box 10142, Pacific Centre
701 West Georgia Street
Vancouver, British Columbia, V7Y 1L2
Fax: 604-899-6814
lrose@bcsc.bc.ca

The Secretary
Ontario Securities Commission
20 Queen Street West
22nd Floor
Toronto, Ontario, M5H 3S8
Fax: 416-593-2318
comments@osc.gov.on.ca

c/o M^{e} Anne-Marie Beaudoin
Corporate Secretary
Autorité des marchés financiers
800, square Victoria, 22^{e} étage
C.P. 246, Tour de la Bourse
Montréal, Québec H4Z 1G3
Fax: 514-864-6381
e-mail: consultation-en-cours@lautorite.qc.ca

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

The Portfolio Management Association of Canada (PMAC), through its Industry, Regulation & Tax Committee, is pleased to have the opportunity to submit comments regarding CSA Notice and Request for Comment - 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").

As background, PMAC represents investment management firms registered to do business in Canada as portfolio managers. In addition to this primary registration, some firms will be dually registered as exempt market dealers, investment fund managers or other registration categories. PMAC was

established in 1952 and currently represents over 180 investment management firms that manage total assets in excess of $800 billion (excluding mutual funds assets). Our mission is to advocate the highest standards of unbiased portfolio management in the interest of the investors served by members. For more information about PMAC and our mandate, please visit our website at www.portfoliomanagement.org.

General Comments

PMAC supports the Canadian Securities Administrators ("CSA") review of the accredited investor prospectus exemption (the "AI exemption") and the $150,000 minimum amount prospectus exemption contained in National Instrument 45-106 *Prospectus and Registration Exemptions* (NI 45-106). We believe that several of the changes being proposed to the AI exemption are positive developments while other areas of the Proposed Amendments may create unnecessary complexity and inefficiencies for market participants.

We applaud the CSA and, in particular, the OSC, for its commitment to harmonizing the AI exemption across the country by removing the carve out in the managed account category of the definition of AI that previously precluded a registered portfolio manager (PM) acting on behalf of a fully managed account in Ontario to qualify as the accredited investor when acquiring securities of an investment fund. This is a very welcome development and we believe an important change for portfolio managers and investors in Ontario.

Our comments on the Proposed Amendments focus on the following areas.

1. Greater Harmonization of NI 45-106

It is our view that regulatory cooperation and coordination of not only the AI exemption but harmonization of all of the available prospectus exemptions across all jurisdictions in Canada should be a priority for the CSA. Harmonization of NI 45-106, generally, would promote further efficiency in Canadian capital markets to the benefit of investors. We note the important steps that have already been taken in this direction but believe there is still work to be done in this area. In particular, we believe that greater harmonization of the exempt distribution reporting forms should be prioritized. The proposed amendments regarding these forms will create more unnecessary complexities and confusion for the market.

2. AI Exemption

Managed Accounts in Ontario

As stated above, we support the removal of the investment fund carve-out from the accredited investor definition for managed accounts in Ontario. We have advocated for this change for several years and applaud the regulators for moving to harmonize this aspect of the AI exemption.

AI Exemption and Family Trusts

We support the amendment to the definition of accredited investor to include family trusts established by an accredited investor for his or her family, provided the majority of trustees of the family trust are accredited investors. We believe this amendment provides some important clarity around the formation of trusts for minors and is a welcome clarification.

Form 45-106F9 Risk Acknowledgement Form for Individual Accredited Investors

As a preliminary comment, we believe that if investors are receiving investment management services from a PM, a risk acknowledgement form should not be required. We understand that in a

discretionary managed account context, this would be the case. As stated in the Proposed Amendments, registered advisers of discretionary managed accounts have a fiduciary duty to investors. A registered adviser of a discretionary managed account is the accredited for the purposes of NI 45-106 and thus no risk acknowledgement would be necessary.

As a technical matter, it is our view that some of the language included in the Form 45-106F9 is problematic. For example, the statement that "…I may never be able to sell these securities…" is not true in the context of investment funds such as those funds that are redeemable upon demand. Accordingly, this language should be rephrased to reflect this point. Similarly, in the context of certain investment funds, continuous disclosure is required to be provided to the investor and thus the statement that "I may not be provided with ongoing information from the issuer" is too broad and should be rephrased to state that, in certain circumstances only, this may be the case.

We also have concerns with the requirement that registrants (including portfolio managers and dealers) must sign this form along with the investor. This will add to the paperwork completed by the investor and maintained by the registrant without any apparent additional investor protection. We note that the risk acknowledgement form currently required for the OM exemption (Form 45-106F4) does not require, among other things, a signature by the selling agent. We query the policy rationale behind the F9 requiring more information that the F4 which is meant for investors arguably requiring more investor protection than accredited investors.

In summary, we question whether requiring accredited investors to sign a risk acknowledgement form and requiring multiple signatures will have any impact on investor behavior and instead have a conditioning effect on investment activity. The reality is that investors are being provided with more and more disclosure, including disclosure on risks associated with investments, than they ever have in the past and it remains unclear whether this disclosure is being understood or impacting investor risk tolerance.

3. Exempt Market Reporting Regime -- Forms 45-106F1 & 45-106F6 for BC

We recommend that the CSA prioritize harmonizing the exempt market reporting regime. We note with consternation the recent proposals published with regards to the new Form 45-106F10 Report of Exempt Distribution for Investment Funds. We will provide more detailed commentary on this Form in a separate submission but note that the bifurcation of the exempt market reporting regime continues to be a significant problem for market participants. One set of harmonized reporting forms for all market participants available to all jurisdictions would eliminate the current and ongoing administrative confusion and complexity in meeting exempt distribution reporting requirements.

With regards to the Proposed Amendments, we believe there should be one version of Form 45-106F1 with a harmonized reporting approach for all jurisdictions. In light of Ontario and BC's commitment to work cooperatively towards a cooperative capital markets regulator, we don't see why two different versions of this form should be maintained going forward. Having multiple versions of this Form continues to be an unnecessary and administrative challenge for registrants and issuers who report in multiple jurisdictions. We recommend the CSA focus its efforts on harmonizing the reporting regime for the exempt market to better enable consistent and streamlined reporting across the country.

While we support minor improvements to Form 45-106F1 to enable the regulators to obtain more information about the exempt market, there are several proposed changes that we do not believe are necessary or achieve the stated objective and that will be unduly onerous without a clear identified purpose for such information and additional safeguards in place to protect the sensitivity of the information being provided. Thus, we have the following more specific comments with some of the changes included in the Proposed Amendments to Form 45-106F1.

- First, Item 7 requires disclosure of investors residing in foreign jurisdictions. It is unclear what purpose this information has. It would be helpful to understand the policy objective of requiring this information.

- Item 8 requires identifying several additional pieces of information (i.e. email and telephone number) about each person being compensated in connection with the distribution and whether such person is an insider of the issuer or a registrant. We question how requiring emails and telephone numbers will enable the regulators to effectively understand and regulate the exempt market. We have concerns with the sensitive nature of this information and it is not clear that this information would not be placed in the public file as made clear in other sections of the form.

- Schedule 1 of Form 45-106F1 requires that all applicable categories of the AI exemption being relied upon be listed. We query why it is not sufficient to only require one category to be identified. The exemption can be relied upon when just one category of the exemption can be met, so it is not clear what benefit requiring further analysis of other applicable categories will provide. Clarity around what benefit the regulators expect to obtain or the policy objective behind this requirement would be helpful.

- Similarly, Schedule 1 also requires identifying several additional pieces of personal information (the investor's email address and telephone number) about the purchaser, and whether such person is an insider of the issuer or a registrant. It should be made clear that where investors refuse to provide this information, there is no obligation to disclose it. Also, it is not clear why additional information on compensation is necessary given that this information is already being provided in aggregate under Item 8.

As a general comment, we query what the policy rationale is for requiring all of this additional information given that in many cases, this information is either not currently being collected and unclear how it would be obtained, will be onerous to collect and verify and is also highly sensitive. Requiring this type of information has other inherent risks and may result in inadvertent disclosure of personal information and sensitive personal financial data. In addition, as a broader observation, information relating to compensation, for example, is already being addressed by other regulatory developments such as CRM 2.

Conclusion

The Proposed Amendments include some welcome and positive developments. However, we continue to emphasize the importance of continued harmonization of prospectus exemptions available across Canada and the exempt market reporting regime and we reiterate that this should remain a key priority for the CSA. We also believe that some of the additional information the regulators are proposing to collect is unnecessary and should be reconsidered in light of more prevailing concerns.

If you have any questions regarding the comments set out above, please do not hesitate to contact Katie Walmsley at (416) 504-7018 or Julie Cordeiro at (416) 504-1118.

Yours truly,

PORTFOLIO MANAGEMENT ASSOCIATION OF CANADA

Katie Walmsley
President, PMAC

Scott Mahaffy
Chair, Industry, Regulation & Tax Committee
Vice President & Senior Counsel
MFS Investment Management Canada Limited

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