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June 18, 2014

VIA EMAIL

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

Dear Sirs/Mesdames,

Re: Request for Comment - Introduction of Proposed Prospectus Exemptions and Proposed Reports of Exempt Distribution in Ontario (the "Proposed Amendments") - Proposed Form 45-106F10 ("Form F10") and Form 45-106F11 ("Form F11" and together with Form F10, the "Proposed Reports")

This letter responds to the Ontario Securities Commission Notice and Request for Comment regarding the Proposed Amendments published on March 20, 2014. We welcome the opportunity to comment on the Proposed Amendments.

The focus of our comments is on the Proposed Reports which would replace Form 45-106F1 ("**Form F1**") in Ontario, Alberta, Saskatchewan and New Brunswick. In summary, we believe that the additional information required by the Proposed Reports is excessive and that the expanded purposes of the Proposed Reports are inconsistent with the purposes and principles of the *Securities Act* (Ontario) (the "**Act**"), and may adversely affect the willingness of investors, particularly those based in non-Canadian markets, to participate in Canada's capital markets.

The Proposed Reports are Inconsistent with the Purposes and Principles of the Act

Onerous Proposed Reports do not Foster Fair and Efficient Capital Markets

The Proposed Reports would require filers to provide substantially more information regarding the issuer than under the current Form F1, including such issuer information as its approximate number of employees; year of formation; financial year-end and names, titles and jurisdiction of residence of control persons and promoters. For certain issuers, much of this information is

already disclosed in continuous disclosure filings. Issuers not underwriters should be required to collect and file any of this information that is not otherwise included in the issuer's filings.

Underwriters should not be made subject to a filing obligation which they cannot fulfill without the cooperation of issuers during a short 10-day filing window (for non-investment fund issuers and some investment fund issuers[1]) or face late fees if the information is late or wrong. The additional information required by the Proposed Reports is not merely impractical to collect, but is inconsistent with the stated purposes and principles set out in sections 1.1 and 2.1 of the Act. These purposes and principles require that investor protection must be balanced with the need to foster fair and efficient capital markets. We respectfully submit that any marginal investor protection benefits which the Proposed Reports might be said to create are outweighed by the drag created on capital formation by gathering information in these reports when the information could easily and more reliably be gathered from issuers in a different way[2].

Proposed Reports Fail to Support Harmonization of Exempt Distribution Reporting Regime

The current exempt distribution reporting regime is nearly fully-harmonized and involves the filing of Form 1 in all jurisdictions other than British Columbia (where Form 45-106F6 is sometimes required[3]). The Proposed Reports would undermine the harmonization principle in s 2.1 of the Act. It would cause a shift from the current two-form system to a three-form system and, potentially, a four-form system for distributions made by certain issuers under one of the four new proposed prospectus exemptions set out in the Proposed Amendments.

The Proposed Reports are Inconsistent with the Original Purpose of Exempt Distribution Reports

Since the "Form 20" post-trade report was first used in 1979, the report of exempt distribution has been used primarily to allow regulators to monitor compliance on a distribution by distribution basis with available exemptions and "hold periods". The report is not a tool for regulators to "enhance their understanding of exempt market activity" at the expense of filers and does not lend itself well to that purpose due to the short 10-day post-trade filing window (for non-investment fund issuers and some investment fund issuers) and possibility of late filing fees in Ontario.

The Proposed Reports Disrupt the Canadian Investing and Capital Markets

The Proposed Reports have the potential to needlessly discourage some private placement activity.

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1 We also note that the Proposed Amendments propose to increase the frequency of the alternative filing requirement for investment funds from annually to quarterly in respect of distributions under certain prospectus exemptions. No substantive reason is provided in the Proposed Amendments as to why more timely information would be desirable in these circumstances and in light of the resulting filing fee increases for investment fund issuers acknowledged by the Proposed Amendments.

2 For example, we note that much information is already being collected regarding investment fund issuers through various forms that non-resident investment fund managers are currently required to file (e.g. forms under Multilateral Instrument 32-102 – *Registration Exemptions for Non-Resident Investment Fund Managers* and OSC Rule 13-502 – *Fees*).

3 An exemption order exists for non-reporting issuers, the underwriters of non-reporting issuers and for investment funds that allows them to file a Form F1 in British Columbia instead of a Form 45-106F6.

On a daily basis, investment dealers prepare Canadian “wrappers” for private placements into Canada in connection with U.S. and international securities offerings. Recently, the Canadian Securities Administrators granted exemptive relief from the requirement to provide Canadian-specific disclosure (either in the form of a “wrapper” or other type of disclosure) for certain types of international offerings subject to certain conditions.

We understand that one of the bases for granting the relief was that the costs relating to compliance with these Canadian offering memorandum requirements was not justified by any meaningful corresponding investor protection benefit for the sophisticated institutions that participate in those offerings. The granting of these “wrapper” exemption orders was an attempt to make it easier for international offerings to be extended to the Canadian institutional market.

Requiring filers to provide the new additional information contemplated by the Proposed Reports may be considered to be a step backward. For example, a foreign issuer may require advice from Canadian counsel in order to determine who in their organization is an “executive officer” and who is an “insider” or a “promoter” of their organization under Canadian law, as those concepts may not be recognized under their local law. Even if they received Canadian legal advice, they might not have the internal means to determine who falls into the relevant categories without expending resources as this information may not be readily available. Requiring foreign issuers to seek legal advice regarding these Canadian concepts is also inconsistent with the purpose of the exempt system which is intended to permit foreign issuers to access the Canadian market without having to examine these concepts which apply to Canadian reporting issuers. Foreign issuers might conceivably decide that the additional costs required to comply with the Proposed Reports would outweigh the benefits of extending the offering to Canada.

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Thank you for the opportunity to comment on the Proposed Reports. Please do not hesitate to contact either Rene Sorell (416-601-7947), Andrew Parker (416-601-7939), or Cristian Blidariu (416-601-8156) should you wish to discuss these matters further.

Yours truly,

“McCarthy Tétrault LLP”