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The Secretary
Ontario Securities Commission
20 Queen Street West
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Toronto, Ontario M5H 3S8

Dear Mesdames:

Re: Comments on the CSA Proposed Amendments Relating to National Instrument 45-106 *Prospectus Exemptions*

Further to the CSA Notice dated February 27, 2014 relating to Accredited Investors and Minimum Amount Exemption, the CSA Multilateral Notice dated March 20, 2014 related to the Offering Memorandum Exemption issued by the ASC, AMF, FCAA, FCNB, as well as the concurrently published Introduction of Proposed Prospectus Exemptions in Ontario by the OSC, we have reviewed the proposals and met with client and members of the exempt market industry, including issuers and registrants, and offer the following comments:

Eligible Investor Investment Limits

1. The proposed amendment that has drawn the most significant level of comment is the proposal under the new Alberta OM model and the Ontario OM model to place a $30,000 annual investment limit on non-accredited Eligible Investors under the OM exemption (the "**Cap**"). Based on the feedback we received, this proposed amendment was viewed as being negative and damaging to the investor and industry alike. Here are some of the comments we received or have developed:

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a. The Cap will significantly reduce the available capital for mortgage investment corporations ("**MICs**"). The mortgage investment industry will be impacted as the Cap will result in large publicly listed MICs receiving the majority of the funds raised thereby reducing competition among MICs and reducing the availability of capital to borrowers, particularly smaller borrowers.

b. The Cap will significantly reduce the amount of capital raised in the exempt market and this will place increasing pressure on exempt market dealers ("**EMD**") and their dealer representatives to succeed financially in the marketplace. In 2009 the CSA introduced NI31-103 with a strong emphasis on regulating the exempt market by introducing the registration category of EMD and regulating the registration of exempt market sellers in the business of dealing in securities. It is perceived that the Cap will reduce investment in the exempt market which will have a negative financial impact on EMDs as well as issuers. It seems ironic that the imposition of the Cap in the name of investor protection could financial threaten the very group of registrants created to facilitate investor protection in the exempt market.

c. The Cap appears to be a pure regulatory override on registrants and investors alike as it does not offer any connectivity with established KYC and KYP practices of EMDs or other registrants. In short, non-accredited Eligible Investors will be limited in their investment choices regardless of whether an exempt market product is suitable for such investor.

d. The Cap will substantially eliminate a non-accredited Eligible Investor's ability to transfer or diversify his or her investment from one product to another. Many exempt market investors have aggregate investments well in excess of the $30,000. In the event such investors wish to redeem, diversify or liquidate their investment and re-invest in another exempt market product, they will have little ability to do so. The Cap therefore imposes a major barrier on portability, diversity and choice of investment, and will create a significant disadvantage to investors participating in the exempt market.

e. Based on the statistical survey information provided by the ASC set out in Annex B to the CSA Multilateral Notice, it appears that the Cap is based on the median investment for individuals and not the average investment. There is no specific explanation of why the limit was set at $30,000 given the statistical information provided. The message we heard was not to increase the Cap above $30,000 but to remove it entirely.

f. Although not a proposed amendment, this comment comes up in the context of Question 4 set out in the CSA Multilateral Notice. EMD clients have noted that one of the methods of establishing an investor as an "Eligible Investor" as defined in proposed amended NI45-106, is to obtain suitability advice from an "eligibility adviser". However, an eligibility adviser only includes a registrant that is an "investment dealer". We suggest that this definition be expanded to permit EMDs to provide suitability advice for this purpose as well. Given that EMDs were developed for the specific purpose of providing suitability advice to exempt market investors, it would only make sense that EMDs be permitted to qualify Eligible Investors as well as Investment Dealers on the basis of suitability advice.

Other Comments Related to Proposed Offering Memorandum Amendments

2. In response to Question 13 set out in the ASC's Multilateral CSA Notice, we can advise that the MIC issuers we heard are concerned by this question. Based on statistical survey information provided by the ASC set out in Annex B to the CSA Multilateral Notice, 76% of the total amounts raised by Alberta based issuers were real estate issuers and MICs. As MICs are non-redeemable investment funds, the feedback we received was of surprise as to why the ASC would be seeking comment to remove the OM Exemption from MICs, given that they are one of the largest users of the OM Exemption. Obviously, our MIC clients are opposed to removing their access to the OM Exemption.

3. In response to Question 15 set out in the CSA Multilateral Notice, our MIC clients have indicated that they often have a related EMD and would be opposed to introducing a restriction on using the OM Exemption through a related EMD like Ontario has. We note that participants in the mutual fund dealer and investment dealer industries regularly sell proprietary products of related issuers. It is not clear why these industries are permitted such a conflict but the exempt market and EMDs would not be permitted to manage the conflict accordingly. Presumably, NI 33-105 *Underwriting Conflicts* has equal application where the OM Exemption is relied on.

4. Another of the overall concerns of the proposed amendments to the OM Exemption is that fact that Canada could potentially end up with four different models for the OM Exemption. Two different current models have been workable given the fairly minor addition of the "Eligible Investor" under the current Alberta model. The potential move to four models seems contrary to the CSA's policy of harmonization and only serves to confuse investors, make the exempt market more difficult to raise capital interprovincially, and will reinforce the international criticism of Canada's "patchwork" securities laws.

   It is worth noting that the BCSC has elected not to follow either the new Alberta model or the Ontario model. B.C. does not have the "Eligible Investor" requirement in its model at all and appears to be satisfied with its current regime despite the considerable layering of additional requirements now proposed by the ASC and the OSC. We believe that the CSA should seek more consistency and harmonization not less. While the proposed introduction of the OM Exemption in Ontario may be two steps forward for the exempt market, the lack of harmony and the increased and restrictive requirements in certain jurisdictions are, unfortunately, one step back.

5. One EMD questioned whether the investor complaints received by Securities Commissions arise from financings prior to the introduction of NI31-103 or whether these complaints arise since NI31-103 became effective. This EMD's concern was whether the proposed amendments are premature and regulators may not fully appreciate the positive effect NI31-103 is having in the exempt market.

Accredited Investor Amendments

6. The primary concern we heard voiced in respect of the proposed modifications to the Accredited Investor Exemption related to the increased onus on the issuer to establish that the investor meets the Accredited Investor criteria. Where a registrant is involved, the KYC and KYP requirements may adequately address this, however, issuers will also raise capital directly from Accredited Investors without a registrant, and a specific request for personal and confidential financial or tax information from a potential investor is viewed as a material intrusion on an investor's privacy. It is perceived that many Accredited Investors will not be open to sharing their personal financial and tax information with an issuer in order to make an investment. The concern being that such awkward requests for personal data end up offending investors resulting in lost capital raising opportunities. Currently, most, if not all, subscription agreements contain representations regarding the investor and whether they are accredited, now a new Risk Acknowledgement Form is proposed. It would seem that between an appropriately worded subscription agreement and the new Risk Acknowledgement Form, an issuer should be able to rely on such documents as evidence of the investor being an Accredited Investor without the need to seek personal financial information.

We appreciate the opportunity to provide comments on the proposed amendments. Please feel free to contact the writer if you have any questions or wish additional information.

Yours very truly,
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