February 24, 2015

BY EMAIL

Dear Sirs/Mesdames:

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
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Yukon
Superintendent of Securities, Nunavut

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Re: CSA Notice and Request for Comment - Proposed Amendments to National Instrument 45-106 *Prospectus and Registration Exemptions,* National Instrument 41-101 *General Prospectus Requirements,* National Instrument 44-101 *Short Form Prospectus Distributions,* and National Instrument 45-102 *Resale Restrictions* and Proposed Repeal of National Instrument 45-101 *Rights Offerings* (the "Proposed Amendments")

The Canadian Advocacy Council[1] for Canadian CFA Institute[2] Societies (the CAC) appreciates the opportunity to comment on the Proposed Amendments.

[1]The CAC represents the 14,000 Canadian members of CFA Institute and its 12 Member Societies across Canada. The CAC membership includes portfolio managers, analysts and other investment professionals in Canada who review regulatory, legislative, and standard setting developments affecting investors, investment professionals, and the capital

As a general comment, the CAC supports efforts to improve the ease with which issuers can raise capital in Canada while balancing investor protection considerations. In addition, we agree that the proposed exemption should only be available to reporting issuers in Canada. Investors are generally familiar with the ability to access current information about issuers on SEDAR and current shareholders may also be receiving specified financial and other continuous disclosure information from the issuer directly. Ideally, investors should be required to hold securities of an issuer for a minimum of one calendar quarter prior to achieving eligibility to participate in a rights offering, such that they would have the opportunity to experience the volatility of the security's price on the exchange and the issuer's track record prior to making a subsequent investment, but we recognize that such a requirement might be difficult for an issuer to administer and would lead to dilution for some shareholders.

We also wish to respond to the specific questions posed in the Notice as follows.

Questions relating to the Proposed Exemption

1. (a) *Do you agree that the exercise period should be a minimum of 21 days and a maximum of 90 days?*

While we do not have a view on the appropriate maximum number of days for the exercise period, we believe the minimum exercise period should be at least 21 business days, to ensure that the requisite materials have been mailed to all shareholders, including foreign shareholders. Issuers and their intermediaries should be given sufficient time to identify beneficial holders to whom the materials must be sent. We agree with market commentators who have indicated that institutional investors may require additional time for internal approvals prior to making a decision with respect to participation in a rights offering. All investors would benefit from a longer period of time in which to make a decision, particularly if they would be required to liquidate other investments to satisfy the exercise price.

(b) *If not, what are the most appropriate minimum and maximum exercise periods? Why?*

Please see response to 1(a) above.

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markets in Canada. See the CAC's website at http://www.cfasociety.org/cac. Our Code of Ethics and Standards of Professional Conduct can be found at http://www.cfainstitute.org/ethics/codes/ethics/Pages/index.aspx.

[2] CFA Institute is the global association of investment professionals that sets the standard for professional excellence and credentials. The organization is a champion for ethical behavior in investment markets and a respected source of knowledge in the global financial community. The end goal: to create an environment where investors' interests come first, markets function at their best, and economies grow. CFA Institute has more than 119,000 members in 147 countries and territories, including 112,000 CFA charterholders, and 143 member societies. For more information, visit www.cfainstitute.org.

2. *We propose that the Notice must be filed and sent before the exercise period begins and that the Circular must be filed concurrently with the Notice. Do you foresee any challenges with this timing requirement?*

No, as issuers are free to prepare the Notice and Circular in accordance with their own internal timing requirements.

3. (a) *Do you foresee any challenges with requiring the issuer to send a paper copy of the Notice?*

No, as there is other continuous disclosure documentation which must be made available to security holders in paper format.

(b) *Do you foresee any challenges with the Circular only being available electronically*?

No, as many Canadian investors are familiar and proficient with SEDAR.

4. *The required disclosure in the proposed Circular focuses on information about the offering, the use of funds available and the financial condition of the issuer. We do not propose to require information about the business in the Circular.*

(a) *Have we included the right information for issuers to address in their disclosure*?

Yes, as information about the business of the issuer will be readily available from other sources. Inclusion of additional information would unduly lengthen the Circular.

(b) *Is there any other information that would be important to investors making an investment decision in the rights offering*?

No.

5. *Do you think that this disclosure will be unduly burdensome? If so, what disclosure would be more appropriate?*

No, issuers should have ready access to the requisite information.

6. (a) *Should we continue to allow rights to be traded? If so, why?*

From an investor prospective, we believe that rights should continue to be traded as such trading permits investors to monetize their rights in the event they do not have access to sufficient liquid funds to satisfy the exercise price. Allowing rights to trade may also have the benefit of setting a tangible value to the rights in the event of a civil lawsuit for misrepresentation. Issuers can also benefit in these circumstances, because the capital raising objective of a rights offering may be defeated if the take up of the securities by existing security holders is low due to lack of funds.

(b) *What are the benefits of not allowing rights to be traded*?

We are of the view that there is no compelling reason not to allow rights to be traded.

(c) *Should issuers have the option of not listing rights for trading*?

While listing rights will provide issuers with the ability to raise capital through a broader potential group of investors, they should be provided with the opportunity to decline a listing if it becomes cost prohibitive.

7. (a) *Do you agree with our proposal to remove pre-offering review*?

Yes. Removing pre-offering review for rights offerings by reporting issuers, which are already subject to continuous disclosure rules and the civil liability for secondary market disclosure regime should result in an increased use of the exemption.

(b) *Do the benefits of providing issuers with faster access to capital outweigh the costs of eliminating our review*?

Yes, particularly if regulators include reviews of Notices and Circulars as part of their continuous disclosure and/or post-distribution focus reviews.

(c) *Post-distribution review would focus on sufficiency of proceeds, stand-by commitments, use of proceeds, insiders and other issues that raise significant investor protection concerns. Are there other areas that we should focus on*?

No, the above issues are sufficient.

8. (a) *Is this the appropriate standard of liability to protect investors given that there will be no review by CSA staff of an issuer's rights offering circular*?

Yes.

(b) *Would requiring a contractual right of action for a misrepresentation in the circular be preferable? If so, what impact would this standard of liability have on the length and complexity of an issuer's offering circular, given that in order for the contractual liability to cover additional continuous disclosure record documents, the issuer may have to incorporate by reference those documents into the issuer's circular*.

We do not believe that requiring a contractual right of action for a misrepresentation in the circular would be preferable to civil liability for secondary market disclosure. However, given the time and cost involved with respect to civil lawsuits, it will be important for the regulators to monitor the use of the exemption and the quality of the disclosure made by issuers once the amendments to the exemption are adopted and encourage best disclosure practices at a very early stage.

9. (a) *Would security holders benefit from knowing the results of the basic subscription before making an investment decision through the additional subscription privilege*?

Some investors would benefit from the receipt of additional information regarding the take up of securities under the basic subscription privilege, particularly with respect to potential dilution of those investors' positions. It is not possible to know in advance the investors for whom this information would be most useful, but we are generally of the view that investors should be provided with clear disclosure and as much information as possible to help make an informed investment decision.

(b) *Would security holders make a different investment decision through the additional subscription if the results of the basic subscription were announced? If so, should the additional subscription privilege be inside or outside of 21 days? Should the split timing for basic subscriptions and additional subscriptions always be required or only required in circumstances where there may be an impact on control*?

It is possible that different investment decisions would be made if the results of the basic subscription were known, and thus additional time should be provided to exercise the additional subscription privilege. In order for the offerings to occur as quickly as possible, the split timing should only be required in circumstances where there may be an impact on control.

(c) *What are the costs and benefits of having a two-tranche system for security holders*?

Please see response to 9(b) above.

Questions relating to the repeal of the Current Exemption for use by non-reporting issuers

10. (a) *If we repeal the rights offering prospectus exemption for non-reporting issuers,*
- *Would this create an obstacle to capital formation for non-reporting issuers*?
- *Do you foresee any other problems?*
- *Would repealing the Current Exemption cause problems for foreign issuers that do not meet the Minimal Connection Exemption? If so, should we consider changes to the Minimal Connection Exemption? Please explain what changes would be appropriate and the basis for those changes.*

Given the availability of other prospectus exemptions, we do not foresee any problems relating to capital formation for non-reporting issuers if the exemption were repealed for those entities. We also do not believe that changes to the Minimal Connection Exemption should be necessary. Foreign issuers should be treated the same as other non-reporting issuers in Canada, regardless of whether such issuers are public issuers in other jurisdictions. Canadian investors should be able to easily access current information about issuers relying on the rights offering exemption and it may be difficult for many investors to retrieve such information from filings made in a foreign jurisdiction, even if such information is available on-line.

(b) *Do you think we should consider changes to the Current Exemption instead of repealing it? If so, what changes should we consider?*

- *If you think we should change the disclosure requirements, please explain what disclosure would be more appropriate.*
- *Should non-reporting issuers be required to provide audited financial statements to their security holders with the rights offering circular if they use the exemption*?

We support the removal of the Current Exemption for all non-reporting issuers, including foreign non-reporting issuers that may be public issuers in another jurisdiction.

(c) *If the Current Exemption is repealed, non-reporting issuers could continue to offer securities to existing security holders under other prospectus exemptions such as the offering memorandum exemption, the accredited investor exemption, and the family, friends and business associates exemption. Are there other circumstances in which non-reporting issuers need to rely on the Current Exemption? If so, please describe*.

We are not aware of any such circumstances.

Questions relating to the Stand-by Exemption

11. (a) *Should stand-by guarantors be subject to different resale restrictions depending on whether or not they are security holders of the issuer on the date of the notice*?

All stand-by guarantors, regardless of whether or not they are security holders of the issuer on the date of the notice, should be subject to a four-month hold period, in order to avoid significant shareholders taking advantage of price discrepancies on a short term basis or otherwise hedge their position such that they have no economic interest in the issuer. Some investors in the rights offering may choose to exercise their rights on the basis of the subscription by the stand-by guarantor and thus such persons, whether they are insiders, management or other significant shareholders, should be required to hold the securities for a minimum length of time.

12. (a) *If the stand-by guarantor is an existing security holder, should we require a four month hold? Why or why not?*

Please see response to 11(a) above.

(b) *We understand that in many cases, a stand-by guarantor receives a fee for providing a stand-by commitment. Should a stand-by guarantor that receives a fee and is a current security holder be subject to a restricted period on resale when other security holders are not subject to the restricted period*?

Please see response to 11(a) above.

Question relating to the Minimal Connection Exemption

13. *Do you anticipate challenges if we require that materials for the Minimal Connection Exemption be filed on SEDAR*?

We do not anticipate challenges as issuers relying on the Minimal Connection Exemption should be able to access SEDAR themselves or through a local agent at low cost.

Concluding Remarks

We thank you for the opportunity to provide these comments. We would be happy to address any questions you may have and appreciate the time you are taking to consider our points of view. Please feel free to contact us at chair@cfaadvocacy.ca on this or any other issue in future.

(Signed) *Cecilia Wong*

Cecilia Wong, CFA
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