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Dear Mesdames:

Re: Proposed Amendments to NI 45-106 *Prospectus and Registration Exemptions,* NI 41-101 *General Prospectus Requirements,* NI 44-101 *Short Form Prospectus Distributions,* and NI 45-102 *Resale Restrictions* (the "Proposed Exemption")

The Investment Industry Association of Canada (the "IIAC") appreciates the opportunity to comment on the Proposed Exemption. We support the initiative to assist issuers by making the Rights Offering process more efficient and accessible for companies seeking to raise capital from existing shareholders. Our comments relating to the questions posed in the Notice are provided below.

Questions relating to the Proposed Exemption

1. We propose that the exercise period for a rights offering under the Proposed Exemption must be a minimum of 21 days and a maximum of 90 days. These time periods are substantially consistent with those under the Current Exemption. Some market participants have told us that an exercise period of 21 days is too long. Others thought a longer exercise period is beneficial. Reasons cited for a longer exercise period are that at least 21 days may be necessary to reach beneficial security holders and foreign security holders and that institutional investors often need a longer period to receive approvals.

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

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

One of the primary reasons that the current exemption is not widely used is due to the extended time required to complete a Rights Offering. The current minimum exercise period was implemented in a time when electronic distribution and access to documents was not widely available, and issuers and investors relied on the postal service for distribution. This process, which is no longer necessary, extends the process by weeks. Given the ability of issuers to communicate to security holders in real-time, we propose that the minimum exercise period by shortened to two business weeks (14 business days). We do not believe that shortening this period will prejudice shareholders, and will allow issuers to access the market in a much more timely and efficient manner.

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?*

We do not foresee any challenges with this timing requirement. We do suggest, however, that the Notice be able to be distributed to shareholders electronically.

3. Some market participants have suggested we consider requiring the issuer to only file and not send the Notice and the Circular. While we do not think that the issuer should have to send the Circular itself, it is our view that the issuer should send the Notice to ensure that each security holder is aware of the offering. We also understand that the issuer would have to send rights certificates to security holders in any event.

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

As noted above, electronic communication is now a widely accepted business practice, and as such, issuers should be permitted to communicate with shareholders in such a manner.

By permitting electronic distribution of the Notice, the time required to undertake a Rights Offering could be shortened, resulting in a more efficient process.

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

Consistent with our position as articulated above, we do not foresee any challenges with the Circular only being available electronically.

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?

The information to be included in the proposed Circular is appropriate.

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

It may be advisable to include a "recent developments" section to allow for disclosure regarding any issues that the board of the issuer believes may be relevant to shareholders.

5. Under the Proposed Exemption, we would require the issuer to include certain information in their closing news release including the amount of securities distributed under each of the basic subscription privilege and the additional subscription privilege to insiders as a group and to all other persons as a group. Other required disclosure includes the aggregate gross proceeds of the distribution, the amount of securities distributed under any stand-by commitment, the amount of securities issued and outstanding as at the closing date and the amount of any fee or commission paid in connection with the distribution. This information will give investors a more complete understanding of who acquired securities under the rights offering. Do you think that this disclosure will be unduly burdensome? If so, what disclosure would be more appropriate?

The proposed disclosure in a closing news release is appropriate. Such information should be readily available to the issuer, and not burdensome to provide.

6. The Current Exemption permits the trading of rights and we propose to allow for the trading of rights under the Proposed Exemption. We have received mixed feedback from market participants on the costs and benefits of allowing rights to trade freely.

On the one hand, the trading of rights adds complexity to a rights offering and could potentially add a few days to the timeline for an average rights offering. The trading of rights also allows the issuance of free-trading securities to new investors. On the other hand, the trading of rights may benefit issuers as it often puts the rights into the hands of holders who are more likely to exercise the rights. It allows for monetization, which

means that security holders who are unable to exercise rights could receive compensation for the rights. It also benefits foreign security holders as the issuer's transfer agent will typically attempt to sell the rights of ineligible security holders on the market.

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

It is extremely important that rights should be allowed to be traded. The trading of rights improves the efficiency and effectiveness of the capital raising process, as it increases the likelihood of a fully subscribed offering, and also provides a much more fair process for all shareholders. Those shareholders that are not in a position to obtain or exercise their rights due to jurisdictional or other issues, are able to obtain the benefits of the rights offering by trading the rights. By making the process more fair and more likely to provide the issuer with a fully subscribed offering, the exemption will be more widely utilized.

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

We do not believe there are benefits from not allowing the rights to be traded.

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

In order to provide a fair process to all security holders, we do not believe that issuers should have the option of not listing rights for trading.

7. When we looked at historic use of rights offerings by reporting issuers, we found that the time between the filing of the draft circular and the notice of acceptance was quite lengthy (an average of 40 days). As a result, we considered options to reduce the review period. One of the options was to conduct a more focused initial review in three days rather than 10 days prior to the regulators' acceptance of the offering. The review would focus on sufficiency of proceeds, stand-by commitments, use of proceeds, insiders, and other issues that raise significant investor protection or public interest concerns. We decided not to proceed with this option but instead to remove regulatory review prior to use. This is similar to other prospectus exemptions and it would significantly improve issuers' time to market. Certain jurisdictions are also proposing reviewing rights offerings on a post-distribution basis for a period of two years to assess the use of and compliance with the Proposed Exemption.

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

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

(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?

Given the number of changes to the Proposed Exemption, including the increase to the permitted dilution limit to 100%, we believe it is appropriate for the regulators to undertake a form of review of the Circular. The review should include the items articulated in 7(c) above. In order to ensure that the objectives of increasing the efficiency and effectiveness of the Proposed Exemption are retained, we recommend that the review period be limited to 3 days, consistent with the review period for a short form prospectus review. It is also important that the review period of the listing exchange also be aligned with the regulatory review to ensure that the objectives of the Proposed Exemption are realized.

8. Currently, an investor in a rights offering has no statutory recourse if there is a misrepresentation in an issuer's rights offering circular or continuous disclosure record. We propose that civil liability for secondary market disclosure provisions would apply to the acquisition of securities in a rights offering under the Proposed Exemption.

> **(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?**
>
> **(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.**

In determining the type of recourse available to investors, the regulators should consider whether there is a pre-offering review of the Circular, and whether the securities available on the exercise of the rights will be available to new shareholders that are not accredited investors.

9. Given the potential size of rights offerings, there may be circumstances where it is desirable to mitigate the effect of the offering on control of an issuer. In this regard, CSA staff question whether security holders would benefit from separating the timing of the basic subscription and additional subscription privilege such that an issuer would announce the results of the basic subscription before commencing the additional subscription privilege period. An issuer's announcement of the results of the basic subscription may help security holders make more informed decisions about their participation under the additional subscription privilege.

> **(a) Would security holders benefit from knowing the results of the basic subscription before making an investment decision through the additional subscription privilege?**
>
> **(b) Would security holders make a different investment decision through the additional subscription if the results of the basic subscription were announced? If so,**
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> **• 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?

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

We do not support the separation of the timing of the basic subscription and additional subscription privilege, such that an issuer would announce the results of the basic subscription before commencing the additional subscription privilege period. The additional step would significantly decrease the efficiency of the process, and will increase the time required to undertake a financing under the Proposed Exemption. Shareholders should be made aware of any potential for a change in control in the Notice and the Circular, so that they may base their decision to exercise their rights on that information. If the two-tier system is introduced, the additional subscription privilege should be outside of the 21 days, and the split timing for the basic and additional subscriptions should only be required in circumstances where there may be an impact on control.

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

10. We propose repealing the Current Exemption for use by non-reporting issuers. There is very little use of the Current Exemption by non-reporting issuers. We also have concerns that existing security holders of non-reporting issuers do not have access to continuous disclosure about the issuer and the rights offering circular contains very limited disclosure about the issuer and its business. Accordingly, there may not be sufficient disclosure upon which an investor can make an informed investment decision.

(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.

(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?

(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.

IIAC members do not have a strong position on this issue, and as such, we elect not to provide a response.

Questions relating to the Stand-by Exemption

11. We propose that the securities distributed under the Stand-by Exemption to a stand-by guarantor who is not a current security holder or who is a registered dealer will be subject to a four-month hold period. We understand that stand-by guarantors are often either insiders of the issuer or registered dealers.

(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?

(b) What challenges would there be for issuers trying to find a stand-by guarantor that is not already a security holder?

Stand-by guarantors should not be subject to different resale restrictions depending on whether or not they are security holders of the issuer on the date of the Notice. Imposing a hold period on such guarantors will reduce the number of individuals or entities willing to undertake this role, which will negatively affect the ability of issuers to raise capital under the Proposed Exemption. Imposing a hold period would seriously restrict the flexibility of guarantors to deal with such securities, and would put them at a disadvantage to shareholders who purchase pursuant to the offering for which they are providing a guarantee. In the case of banks and other financial institutions, due to their internal risk policies and capital requirements, we expect that imposing a hold period will effectively bar them from acting as guarantors.

12. We are considering whether securities distributed under the Stand-by Exemption to a stand-by guarantor that is an existing security holder should also be subject to a four-month hold.

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

No hold period should be required on guarantors, regardless of whether or not they are a shareholder. (see answer in 11, 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?

No restricted period on resale should be required for guarantors, regardless of whether they are paid a fee, when other security holders are not subject to a restricted period.

(d) What challenges do you foresee if we require a four-month hold?

Imposing a four month hold period will increase costs and decease the likelihood of issuers finding a guarantor for the offering.

Question relating to the Minimal Connection Exemption

13. We are considering whether we should require the filing of materials with the regulator through SEDAR as part of the Minimal Connection Exemption. Most issuers using the Minimal Connection Exemption would be foreign issuers. We understand that some, but not all, of these issuers use local counsel to file the materials. Do you anticipate challenges if we require that materials for the Minimal Connection Exemption be filed on SEDAR?

We do not foresee any practical challenges in requiring materials to be filed on SEDAR for those using the Minimal Connection Exemption.

Thank you for considering our response. If you have any questions, please do not hesitate to contact me.

Yours sincerely,

Susan Copland