British Columbia Securities Commission
Alberta Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
Financial and Consumer Services Commission of New Brunswick
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island
Nova Scotia Securities Commission
Securities Commission of Newfoundland and Labrador
Registrar of Securities, Northwest Territories
Registrar of Securities, Yukon Territory
Superintendent of Securities, Nunavut

Gordon Smith
Associate Manager, Legal Services, Corporate Finance
British Columbia Securities Commission
1200 - 701 West Georgia Street
P.O. Box 10142, Pacific Centre
Vancouver, British Columbia V7Y 1L2

Steven Weimer Manager, Compliance, Data & Risk
Corporate Finance – Compliance, Data & Risk Alberta Securities Commission
Suite 600, 250 – 5th Street SW
Calgary, Alberta T2P 0R4

The Secretary
Ontario Securities Commission
20 Queen Street West
22nd Floor
Toronto, Ontario M5H 3S8

December 14, 2020

Dear Regulators

Comments on the proposed amendments to NI 45-106 relating to the OM prospectus exemption

Thank you for the opportunity to submit comments to the proposed amendments to NI 45-106 relating to the OM prospectus exemption.

While we feel most of the amendments are reasonable, we do have concerns about the rationale for the amendments and about some of the proposals.

What is the rationale for the proposed amendments?
The CSA has not set forth a cogent rationale for the proposed amendments. The assertion that larger issuers are using the exemption despite the CSA's apparent original intention that it should be used by smaller, simpler issuers does not by itself justify the proposals, which may have a strong negative on those smaller issuers that happen to fall within their scope. Are there specific deficiencies or harms the regulators have identified either in their examinations or that are new in the market? If so, we are of the opinion the regulators should make those known to industry. Are there alternatives to the proposed disclosure requirements? We have read Ontario's Staff Notice 45-717, but have not had the opportunity to consider the findings in relation to the proposed amendments.

While we agree that investors should be in the best possible position to make informed decisions, the sheer volume of information that is currently required and that is proposed is becoming overwhelming. This raises two matters of concern:

1. Making disclosure more complex and voluminous may result in clients relying more and more on the advice of the dealer rather than reading through large volumes of documents they find difficult to understand. This would not be ideal.
2. Increasing disclosure so that it approaches prospectus level information will likely lead to increased costs, which would defeat one of the stated purposes of the OM exemption.

We have the following specific comments:

Some definitions appear to be overly broad
We had difficulty understanding the regulators' intent with respect to some of the definitions, which appear to be overly broad. In particular, the following caused concern:

"Collective investment vehicle"—This definition is very broad and would capture all types of pooling vehicles, including those that fall within the definition of "investment fund". The regulators have recognized this, but refer specifically to mortgage, loan, and receivables portfolios. If the regulators are concerned with these specific types of vehicles, then they should limit the definition to those.
"Material contract"—This definition is very broad, particularly as it includes contracts of an issuer's subsidiaries. Is the test meant to be objective? There is an implication that it is for the issuer to decide what is material. Could they be certain the regulators would accept their determination that a contract is not material?
"Qualified appraiser"—This does not appear to be defined. However, the requirements would make it incumbent on the appraiser to certify that the appraisal meets the standards of the professional

veronica@valc.ca 218 – 3580 Moncton Street, Richmond, BC V7E 3A4 604-644-9232

association to which the appraiser belongs. This implies that a qualified appraiser must belong to a professional association. What if the professional association has not publicly endorsed any standards? For example, AIC-BC does not state on its website whether it endorses any particular set of standards.

Some of the proposed disclosure requirements may be harmful or costly to business

Effectively requiring an updated appraisal every six months

The proposed amendment would require that an issuer that is engaged in real estate activities provide an appraisal containing the fair market value appraised within six months before the appraisal is given to the purchaser. Appraisals are costly and requiring one or possibly more (if an issuer has interests in more than one property) every six months would necessitate time and money without necessarily providing the equivalent value in terms of timely information to a purchaser. In addition, it would mean that purchasers might receive different information depending on the time the appraisal is given to them. Furthermore, please clarify that the intention of subsection 19.8 is that all appraisals must be delivered to the regulator when an OM is filed.

Disclosure of dividends and distributions

Proposed item 1.2.1 of Form 45-106F2 would require the issuer to complete Schedules 1 or 2 as if the other issuers were the issuer. In those circumstances, the issuer would be completely dependent on the information provided by those other issuers, yet would bear all the burden of liability, particularly if there are misrepresentations. The cautionary statement in item 11.2 appears not to apply in these circumstances. Despite all the due diligence the issuer may perform in respect of the other issuers, it is possible for misrepresentations or even fraud to take place. Making the issuer liable despite all precautions it may have taken would be unfair and inequitable.

Issuers without significant revenue

The information asked for in proposed item 2.6.1 of Form 45-106F2 appears to relate to mining and exploration issuers and may be irrelevant for other types of issuers. We suggest this be amended to refer only to mining and exploration issuers.

Material contracts

Proposed item 2.7 of Form 45-106F2 refers to material contracts to which the issuer is a party, yet the definition of material contract includes contracts entered into by a subsidiary of the issuer, which are material to the issuer. The inconsistency should be resolved.

Compensation and security holdings of certain persons

Some of the information required under proposed items 3.1 and 3.2 of Form 45-106F2 is intrusive and exceeds the bounds of privacy, for example, place of residence, expected compensation, and experience associated with principal occupation. Experience related to the person's role in the issuer would be more helpful to a purchaser. In addition, the information required for beneficial owners holding more than 50% of a non-individual person may be necessary for anti-money laundering purposes but serves no purpose for the purchaser.

Redemption and retraction history

Some of the information required in proposed items 5A and 5B may be harmful to issuers because it will disclose information to their competitors that can be used against them.

veronica@valc.ca 218 – 3580 Moncton Street, Richmond, BC V7E 3A4 604-644-9232

Interim financial report

The proposed instructions would require the issuer with an ongoing offering to update its offering memorandum at least twice and possibly three times a year. The costs associated with updating the offering memorandum would increase concomitantly. Auditing fees are expensive and rising. Spending money unnecessarily on auditing fees increases the offering costs and leaves less money for the actual investment objectives.

Comments on proposed Schedule 1 and Schedule 2 to Form 45-10F2

We offer a general comment that the information required is extensive and disclosure of some of it may be harmful from a competition perspective; it will be time-consuming to collect and ensure accuracy; and it may be costly as a result.

Once again, thank you for the opportunity to provide these comments.

Yours truly

Veronica Armstrong

veronica@valc.ca 218 – 3580 Moncton Street, Richmond, BC V7E 3A4 604-644-9232