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Addressed to:

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

Re: *CSA Notice and Request for Comment, Proposed Amendments to National Instrument 45-106 Prospectus Exemptions and Proposed Changes to Companion Policy 45-106CP Prospectus Exemptions Relating to the Offering Memorandum Prospectus Exemption*

Comments made on behalf of FrontFundr Financial Services Inc.

Summary of the Proposed Amendments

Issuers Engaged in Real Estate Activities

The Proposed Amendments include the new defined term "real estate activities". Issuers engaged in real estate activities would be subject to new requirements, including:

- Providing an independent appraisal of an interest in real property to the purchaser if
  - the issuer has acquired or proposes to acquire an interest in real property from a related party (**Related Party**), as that term is defined in NI 45-106,
  - a value for an interest in real property is disclosed in the offering memorandum, or
  - the issuer intends to spend a material amount of the proceeds of the offering on an

interest in real property.

- Completing new Schedule 1 *Additional Disclosure Requirements for an Issuer Engaged in Real Estate Activities* (**Schedule 1**) to Form 45-106F2, which includes:
  - Disclosure relevant to issuers that are developing real property, such as a description of the approvals or permissions required, and milestones of the project.
  - Disclosure relevant to issuers that own and operate developed real property, such as the age, condition and occupancy level of the real property.
  - Disclosure of penalties, sanctions, bankruptcy, insolvency and criminal or quasi-criminal convictions for parties other than the issuer, such as a party acting as developer.
  - Disclosure of any purchase and sale history of the issuer's real property with a Related Party, so investors can better evaluate transactions involving Related Parties.

We note that Schedule 1 would not apply to real property that when taken together would not be significant to a reasonable investor. This exception is intended to ensure that issuers are not subject to an undue disclosure burden.

We think the Proposed Amendments as they relate to issuers engaged in real estate activities are necessary because as noted, research indicates that a significant proportion of issuers utilizing the OM Exemption are engaged in real estate activities. We think more specific disclosure about the real property or development plans for the real property is needed for investors, and we also think that these issuers will benefit from the greater certainty provided by a disclosure framework tailored for them.

Comment:

We agree with the proposed amendments. Real Estate products can often have complex structures in place with several entities working in tandem toward specific goals regarding the development, management or sale of real property. As the OM at times becomes a headwater between retail and/or more experienced investors, the need for clarity on an issuer's working relationships or target for an issuer's use of funds becomes more essential. We have found that issuers recognize the importance of transparency in this regard in general, and often provide additional disclosure within their offerings that may not be strictly called upon via the legislation.

We note that a schedule directing issuers to include additional disclosure within Item 2.2: The Business might be appropriate, in order to highlight pertinent information early within the document.

Issuers that are Collective Investment Vehicles

The Proposed Amendments also include the new defined term "collective investment vehicle". A collective investment vehicle is defined as an issuer whose primary purpose is to invest money provided by its security holders in a portfolio of securities. This definition would include issuers that hold portfolios of mortgages, other loans, or receivables. To the extent they are permitted to use the OM Exemption, the definition would also include investment funds.

Issuers that are collective investment vehicles would be required to complete new Schedule 2 *Additional Disclosure Requirements for an Issuer That is a Collective Investment Vehicle* to Form 45-106F2, which includes:

- A description of the issuer's investment objectives.
- Disclosure of penalties, sanctions, bankruptcy, insolvency and criminal or quasi- criminal convictions for persons involved in the selection and management of the investments.
- Disclosure of information regarding the portfolio.
- Disclosure regarding the performance of the portfolio.

We think the Proposed Amendments as they relate to issuers that are collective investment vehicles are necessary because as noted, research indicates that a large proportion of issuers utilizing the OM Exemption could under the Proposed Amendments be collective investment vehicles. We think investors need more information, including about the party making the investment decisions, how the investments are chosen and the composition and performance of the portfolio. As with issuers engaged in real estate activities, we think issuers that would be collective investment vehicles will also benefit from the greater certainty provided by a disclosure framework tailored for them.

General Amendments

The General Amendments include:

- Making the provisions in the OM Exemption that deal with the standard of disclosure for an offering memorandum and amending an offering memorandum clearer and more user-friendly for issuers and investors.
- Requiring that the filed copy of an offering memorandum allow for the searching of words electronically. This change is intended to make reading and reviewing offering memorandums more efficient for all recipients.
- With respect to Form 45-106F2:
    - The addition of several more disclosure items to the cover page to highlight those matters for investors.
    - Enhanced disclosure where a material amount of the proceeds of the offering will be transferred to another issuer that is not the issuer's subsidiary, or a material amount of the issuer's business is carried out by another issuer that is not the issuer's subsidiary. This is intended to give investors better disclosure as to arrangements of this nature and the ultimate use of the offering proceeds.
    - Disclosure of any purchase or sale history of any business or asset of the issuer's (excluding real property) with a Related Party, so investors can better evaluate transactions involving Related Parties.
    - The addition of Related Parties that receive compensation to the compensation disclosure and securities ownership table.
    - For item 3.3, adding disclosure of criminal or quasi-criminal convictions. This is consistent with disclosure requirements for more recently developed prospectus exemptions.

- The addition of disclosure regarding fees or limitations with respect to redemption or retraction rights.
- Further disclosure regarding redemption or retraction, including requests made to the issuer, requests fulfilled by the issuer including the price paid and the source of the funds, and outstanding requests.
- A new requirement to disclose the source of funds for dividends or distributions paid that exceeded cash flow from operations.
- Reference to the requirements of National Instrument 33-105 *Underwriting Conflicts*.
- New cautionary disclosure for instances where expert reports, statements or opinions are included in an offering memorandum and there is no statutory liability against the expert.
- A new requirement to amend an offering memorandum to include an interim financial report for the most recently completed 6 month interim period when a distribution of securities under an offering memorandum is ongoing.
- Other amendments intended to clarify or streamline existing provisions or provide improved disclosure.

The General Amendments are closely related to issues that we have seen in our ongoing review and compliance work regarding offering memorandums.

Comment:

We agree with the proposed additions in conjunction with the following considerations:

- Disclosure of information regarding the portfolio.
- Disclosure regarding the performance of the portfolio.

If we are understanding the proposed change correctly, the suggested requirements may be suitable for an investment fund, wherein timely NAV pricing comes into play etc, but for a CIV that acts like a portfolio, but in fact may not be a true portfolio run by a PM, this may force an inexperienced issuer to provide disclosure which may not be accurate if related to an interim period. The portfolio disclosure requirement becomes less necessary however, if CIVs are restricted in their activities and goals, and outcomes are specific in nature (clearly identified investment flow or acquisition target within the OM, for example, and the historical outcomes of these actions, if provided on an interim basis).

We also note that a schedule directing issuers to include additional disclosure within Item 2.2: The Business might be appropriate, in order to highlight pertinent information early within the document.

2.6.1: *Additional Disclosure for Issuers Without Significant Revenue*

Comment:
It is not clear whether 2.6.1 refers exclusively to resource related issuers or also includes non-resource related issuers. The wording 'without significant' revenue, if not clearly defined, is

*perhaps too ambiguous. A stand-alone section providing disclosure on revenue exclusively would be of benefit to an investor; and not only to understanding low or no revenue issuers. A devoted revenue section should be shaped by **how** an issuer earns revenue and not **how much** revenue they expect to earn. Projections not based on audited financials and supported by a set number of years of activity are invariably optimistic in nature and can be misleading. As part of best practice, issuers could provide a picture of anticipated sales given their revenue model, including both supporting and mitigating factors, with additional reference to Item 8: Risks and Item 12: Financial Statements.*

Other matters included in or related to the Proposed Amendments

In addition, the Proposed Amendments also include changes to Form 45-106F4 *Risk Acknowledgement*, which is the required form of risk acknowledgement for investors purchasing a security under the OM Exemption. These changes are to make the form more understandable and useful to investors and are consistent with recent amendments to risk acknowledgement forms required in connection with other prospectus exemptions.

Comment:

We agree with the proposed amendments, though note that a further distinction may be required in identifying the type of registrant in the last risk item within the acknowledgement: **You will not receive advice –** *[Instruction: Delete if sold by registrant]. We recommend the line be changed to [Delete if sold by a registered portfolio manager]. The instruction as is may produce some confusion for other registrants that do not provide investment advice as part of their responsibilities (EMD).*

*We also note that though "***The issuer of your securities is a non-reporting issuer** *[Instruction: Delete if issuer is reporting]" is part of the current F4, it presents somewhat contradictory or potentially confusing guidance, as issuers must publicly provide audited financial statements as a requirement of the exemption at the time of a distribution, along with an F16 use of funds for each year in which it is utilized, as applicable.*

Other considerations:

To reduce costs for an issuance, without unduly increasing risk to investors, Staff might consider the use of a 'review' of financial statements rather than an audit for distributions under a set amount ($2M, for example) and further defined by a restriction of use as applicable (CIV or otherwise). Dependent upon the maximum amount allowable under the forthcoming NI 45-110 Crowdfunding, a bridged approach to OM use by developing or established non-reporting issuers could be an important component within the market and our collective investment ecosystem. There is an opportunity for available exemptions to work in tandem more efficiently and better facilitate a possible path toward the public markets for an issuer, or to other traditional exit or growth opportunities. Actions in this regard would provide Canadian start-ups or developing issuers a much clearer path toward capital collection then what we have seen to date.