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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

c/o 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 V7Y1L2
gsmith@bcsc.bc.ca

Steven Weimer
Manager, Compliance, Data & Risk
Corporate Finance Compliance, Data & Risk
Alberta Securities Commission
Suite 600, 250-5th Street SW
Calgary, Alberta
T2P 0R4
steven.weimer@asc.ca

The Secretary
Ontario Securities Commission
20 Queen Street West
22nd Floor
Toronto, Ontario
M5H 3S8
comments@osc.gov.on.ca

Me Philippe Lebel
Corporate Secretary and Executive Director,
Legal Affairs
Autorité des marchés financiers
Place de la Cité, tour Cominar
2640, boulevard Laurier, bureau 400
Québec (Québec) G1V 5C1
consultation-en-cours@lautorite.qc.ca

Dear Sirs/Mesdames:

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 (collectively, the "OM Exemption Amendments")

The Canadian Association of Alternative Strategies & Assets ("CAASA") is pleased to have this opportunity to comment on the OM Exemption Amendments.

CAASA was created in response to industry requests for a national group to represent the Canadian alternative investment participants, including investors, asset managers, and service providers. CAASA currently proudly represents more than 250 members including more than 25 of which are active in real estate investment funds and more than 15 that are active in mortgage lending. CAASA is inclusive in that it welcomes participation from all companies active in the space as well as select individuals (such as those employed by investors) who might want to participate in committees and working groups — or simply attend member events — without their employer being a member of the association. CAASA is very active with 12 committees and working groups, organizing approximately 50 events each year. Pan-alternative, for CAASA, encompasses all alternative strategies and assets including hedge funds/alternative trading strategies, private and public real estate (funds and direct), private lending, private equity, infrastructure, development and project finance, digital assets/crypto-assets, weather derivatives and cat bonds, and all aspects of diligence, trading, structuring, dealing, and monitoring alternatives in a stand-alone portfolio and as part of a larger investment strategy. For more information, please visit www.caasa.ca.

The OM Exemption Amendments, if adopted, will require issuers engaged in real estate activities (as defined) to include additional significant disclosure when they use the offering memorandum exemption (the "OM Exemption") to sell securities. To a somewhat lesser extent, issuers that are considered collective investment vehicles will also have additional disclosure obligations. Our comments below relate to the requirements that will be placed on issuers investing in real estate projects and mortgage investment entities. While we are supportive of minimum standards requiring clear, meaningful disclosure, we are concerned that the additional regulatory burden associated with several of the proposed new requirements outweigh the potential benefits to investors. Some of our members have estimated that the cost of preparing and filing an offering memorandum in the current form required by the OM Exemption can exceed $100,000. Issuers often utilize the services of third-party exempt market dealers, who charge the issuers a 10% commission, resulting in an issuer committing 12% of capital raised before even getting off the ground. While many of the new disclosure requirements are a welcome development, the totality of the new obligations may make it even more difficult and cost prohibitive for early stage and small businesses to raise capital in the private markets, and who need to be able to scale operations to thrive.

Our specific comments are set out below.

CAASA | 120 Adelaide St. W., Suite 2500 | Toronto, ON | M5H 1T1 | 647-953-0737

Property Appraisal Requirement

The OM Exemption Amendments would require issuers engaged in real estate activities to provide an independent appraisal of an interest in real property to the purchaser in the enumerated circumstances, including if the issuer intends to spend a material amount (emphasis added) of the proceeds of the offering on an interest in real property.

The application of the requirement to provide an appraisal if an issuer intends to spend a material amount of the proceeds of the offering on an interest in real property is unclear. We understand that a property appraisal may be an important consideration for single purpose investments, such as for a limited partnership that is formed for the purpose of raising capital to invest in one property. If an issuer's only activity relates to one property, then the issuer's business, the property, and the valuation methodology for the purchase price should all be explained and verified for potential investors. However, the utility of providing investors with copies of property appraisals vastly diminish for larger, more diversified property portfolios. The cost of providing many appraisals could become prohibitive quickly; to illustrate, it could cost upwards of $1 million/year to provide appraisals for a portfolio of approximately 80 buildings twice a year. These issuers would also be subject to the increased administrative burden of obtaining such appraisals, a burden to which not even reporting issuers would be subject.

We query whether investors would review tens, if not hundreds, of property appraisals as part of their investment decision making process. We believe the OM Exemption Amendments should clarify that the requirement only applies to the extent a material amount of the proceeds is directed to any one interest in real property. Clarification of this point, as well as additional regulatory guidance on the meaning of a "material amount" in this context, would be welcome by issuers to ensure a consistent level of disclosure in the industry. We have similar comments with respect to the new disclosure requirements in Schedule 1 to Form 45-106F2, below.

We also understand that larger issuers with a real estate portfolio already undertake a number of verification steps with respect to the values of their properties (initially set by their own experts), including obtaining consultant reports, cap rates and offset rates at the time of purchase. Such issuers also utilize the services of large professional audit firms that use their own valuators to confirm the reported prices and assumptions used for the portfolio and management of those issuers are responsible to report back to their boards of directors. Such measures are a valuable alternative to requiring unnecessary independent property appraisals adding hundreds of pages of disclosure and additional costs passed along to investors.

We note as well that even for smaller issuers, providing investors with a copy of a property appraisal could put that issuer at a competitive disadvantage if it later intends to try to sell that property. The value indicated on the appraisal could potentially set a ceiling value in

future auction negotiations and could be seen by some as proprietary information that should not specifically be handed out to investors.

Additional Disclosure in Schedule 1 to Form 45-106F2 for Issuers Engaged in Real Estate Activities

A new Schedule to Form 45-106F2 is proposed for issuers engaged in real estate activities, including, for issuers that own and operate developed real property, the age, condition and occupancy level of the property.

It is noted that the Schedule would not apply to an interest in real property, or more than one interest in real property taken together, that when considered in relation to all interests in real property held by the issuer, would not be significant enough to influence a decision by a reasonable investor to buy, hold or sell a security of the issuer. We agree that both issuers and investors benefit from the certainty provided from a tailored disclosure framework, but do not believe that the exception as stated is clear in its application. We would appreciate further guidance from the CSA on their expectations with respect to when the additional disclosure would be required (e.g. for interests in one property representing greater than 20% of the total investment portfolio of the issuer) in order to meet the stated purpose of consistent disclosure requirements for issuers.

The application of the exclusion is important, as the disclosure required by Section 3 of proposed Schedule 1 would amount to a large volume of additional material for any issuer with a substantial real estate portfolio. We submit that reams of information such as the legal description of a property's location, the utility provider, the type of construction, age and condition of any buildings affixed to the real property and a description of any units for sale or rental may be useful for a single purpose limited partnership investing in one commercial property, but the same cannot be said of a mature real estate fund with hundreds of properties. We believe it is more important that those issuers accurately, clearly and concisely describe their properties as they do currently, rather than incur the time and expense to prepare information that investors have not asked for and objectively do not require with respect to a larger portfolio. While the exclusion would seem to apply in these circumstances, greater certainly would be welcome. The demarcation is further confused in Section 3(2) of the Schedule, which provides that if the issuer is providing disclosure on 20 or more interests in real property, it may disclose the information on a summarized basis with respect to either the portfolio interests as a whole, or broken into subgroups. Such language suggests that portfolios of 20 or more would still be expected to provide the information in the Schedule (albeit in a summarized form) and the exclusion would not apply.

We note that the proposed exclusion would also not apply to section 4 (regarding any appraisals provided), section 5 (applicable to purchasers acquiring interests in real property),

section 10 (future cash calls) and section 11 (applicable to purchasers acquiring an interest in real property that could be subject to a rental pool agreement or a rental management agreement) of the Schedule.

While we would prefer that issuers with large, diversified portfolios not be subject to the additional disclosure in the Schedule, we agree that investors should be made aware of any potential future contribution requirements they will be called upon to make.

Additional Disclosure in Schedule 2 to Form 45-106F2 for Issuers that are Collective Investment Vehicles

The OM Exemption Amendments would require collective investment vehicles to complete a new Schedule 2 to Form 45-106F2, which would include requirements to disclose specific portfolio information. As it relates to issuers involved in mortgage lending, most of the disclosure requirements in Section 3(3) of the Schedule appear to be on an aggregate basis or based on an average of all mortgages in the portfolio. We would be concerned with any disclosure requirement that would allow competitors to reverse engineer the details of any one mortgage to identify the property or the borrower, including with respect to the borrower's name, interest rate or maturity date. For example, Section 3(3)(k) of the Schedule would require additional disclosure if a mortgage were to comprise 10% or more of the total principal amount of the mortgages. The extra disclosure would include the property type and where the property is located. The later requirement would not raise an issue if the property's location could be described in a general fashion (i.e. in the City of Montreal), but if it required a legal description of the property that would become problematic.

Section 4 of the Schedule would require an issuer to provide performance data for the 10 most recently completed financial years of the issuer ended more than 120 days before the date of the offering memorandum, including a description of the valuation methodology for the portfolio securities and the methodology for calculating the performance data. We think it would be helpful to clarify regulatory expectations for issuers with less than 10 years of history as well as additional guidance on how the performance numbers should be presented (e.g. in chart form with metrics following).

General Amendments

Certain of the proposed amendments would apply to all issuers using the OM Exemption, including a 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 the document is ongoing. We believe that the current financial statement requirements required for use of the OM Exemption are sufficient. Together with the requirement to ensure that an offering memorandum does not contain a misrepresentation, we believe that investors are

provided with sufficient accurate financial information. The added time and cost to update every offering memorandum to include interim financial reports in the enumerated circumstances does not appear to be warranted.

If there have been specific concerns with the audited information presented, we would prefer to see more targeted regulatory reforms or enforcement actions related to those specific issues.

Concluding Remarks

Thank you for considering our submissions. We would be pleased to answer any questions you may have or discuss our comments in further detail.

Yours truly,

"James Burron"
James Burron
President
james@caasa.ca
(647) 525-5174