December 15, 2020

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

By Email to:

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
604.899.6656 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
403.355.9035 steven.weimer@asc.ca

The Secretary
Ontario Securities Commission
20 Queen Street West 22nd Floor
Toronto, Ontario M5H 3S8
Fax: 416-593-2318
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
Fax: 514 864-8381
consultation-en-cours@lautorite.qc.ca

Dear Sirs/Mesdames:

Re: 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 (the "Proposed Amendments")

We are pleased to provide comments on the Proposed Amendments on behalf of Equiton Partners Inc. and its affiliates ("Equiton"). Equiton is a private equity firm specializing in real estate that offers alternative investments in the private capital market through two private real estate investment trusts (REITs) with a combined net asset value exceeding $240 million. These funds are issuers engaged in real estate activities as defined in the Proposed Amendments.

We support the CSA's effort to improve disclosure for investors accessing the private capital market through the Offering Memorandum Prospectus Exemption and to provide issuers with clear disclosure requirements. The private capital market is important for providing small issuers with access to capital and providing investors with real estate investment opportunities that are not subject to the volatility of the public markets. Improved disclosure will give investors more confidence in making private market investments and better serve all private market participants. We do have some specific comments on aspects of the Proposed Amendments that will impose an inordinate regulatory burden or require some clarification.

Interim Financial Statements

The Proposed Amendments will impose a requirement on issuers in ongoing distributions to amend the offering memorandum to include interim financial reports for the most recently completed 6-month period. These interim financial reports may be unaudited. While this may seem like an innocuous requirement, it will impose a significant regulatory burden and cost.

The offering memorandums for the Equiton funds are updated and amended annually through a process requiring a review and approval by the fund's external legal counsel which prepares the updated offering memorandums as well as a review and approval by the fund's auditors which prepare the audited financial statements attached to the offering memorandums. These reviews and approvals are required before the independent trustees of the fund will approve the updated memorandum. This review process is important to ensure that the updated offering memorandum provides full and accurate disclosure and does not contain any misrepresentations. This is a costly process that involves not only professional fees for external counsel and the auditors but also for the independent property appraisers that prepare the property valuations that the auditors rely on to produce the financial statements. Once approved, there are also translation costs of the offering memorandum for distributions in Quebec which are significant. Amending the offering memorandum after six months to include unaudited interim financial statements will require a similar process and associated costs.

These costs are not fully captured in Table 7 *(Estimated Total Cost of 6-month Amendment of Offering Memorandum)* of the cost-benefit analysis contained in Annex E to the Proposed Amendments. It is submitted that these total costs far exceed the anticipated benefit that more current disclosure will allow investors to make a "more informed' investment decision. It is also submitted that this proposed six-month update by amendment to the offering memorandum is

unnecessary. Interim financial statements will typically not disclose any significant change in the financial position of an issuer that would impact an investor's decision to invest. Any significant change in the financial position of an issuer during the year constituting a material change would require issuers to amend the offering memorandum in any event. The proposed amendment of the offering memorandum to include unexceptional interim financial statements requires the same process as updating and amending the offering memorandum annually and the associated costs. The regulatory burden associated with this requirement in the Proposed Amendments is issuance costs that will be almost 100% higher. It is our experience that investors are not seeking this information as we have never received such a request for unaudited interim financial statements.

If the CSA feels that it is important to get unaudited financial statements for the six month period to investors, a less costly alternative could be accomplished by an amendment to the Offering Memorandum Prospectus Exemption requiring that these unaudited financial statements be filed with the regulators where they will be posted on SEDAR and made available to the public as are the annual audited financial statements. This would impose virtually no cost on issuers as it would not require an amendment to the offering memorandum. Any investors who want this information would be able to access it on SEDAR at no cost.

Appraisals

The Proposed Amendments would require issuers to deliver an appraisal of an interest in real estate where the issuer proposes to use a material amount of the proceeds of the offering to acquire an interest in real property. This requirement may be reasonable for an issuer proposing to raise funds to acquire an identified property but is problematic for issuers in ongoing distributions that raise money to acquire interests in real properties to add to a portfolio in accordance with the investment objectives disclosed in the offering memorandum. While all of the proceeds of the offering will be used to acquire interests in real property, a specific property may not be identified at the time of a distribution or properties may be in negotiation which are typically subject to non-disclosure agreements until a purchase and sale agreement is finalized. The operation of proposed section s.19.5(c) and s.19.6 would require the issuer to deliver to a purchaser an appraisal of "the interest in real property" but it Is not clear as to what "interest in real property" is to be the subject of the appraisal given that a specific property has not been identified. There needs to be an exception from section 19.5(c) for issuers using proceeds of offerings with ongoing distributions.

A further issue arises with the requirement on issuers to deliver an appraisal to purchasers with the offering memorandum under proposed section 19.6 and file an appraisal with regulators concurrently with the offering memorandum under proposed section 19.7. The appraised or estimated value of a commercial property is largely based on the net operating income of the property. Appraisals of commercial properties generally are lengthy documents running 75 pages or more and contain operating and financial data for the property that may have been provided by the owner/vendor of the property on a confidential basis and may be subject to a non-disclosure agreement. A similar confidentiality agreement between the property appraiser and the client is also typically contained in the property appraisal itself which requires the prior written consent of the appraiser to disseminate all or any part of the appraisal. A condition contained in property appraisals recently prepared for Equiton expressly states that "all or part of the contents of the report shall not be disseminated or otherwise conveyed to the public in any manner whatsoever or ... quoted from or referred to in any offering memorandum of the

client or in any documents filed with any governmental agency without the prior written consent and approval of the author...". This is contained in the Assumptions and Limiting Conditions Addendum attached to the appraisal which we believe follows a template mandated by the Appraisal Institute of Canada for use by its members. The proposed delivery and filing requirements may require an issuer to breach such agreements. It may be possible to address some of the confidentiality issues as it relates to non-arms-length related party transactions where independent appraisals are critical but we would recommend that the CSA consult with the Appraisal Institute of Canada on this proposal and the role of its members' appraisals in the securities regulatory regime before proceeding with the Proposed Amendments.

Form 45-106F2 -Schedule 1 - Additional Disclosure Requirements

The additional disclosure requirements for issuers engaged in real estate activities set out in proposed Schedule 1 to Form 45-106F2 will require the disclosure of information that may be voluminous and significantly add to the length of the offering memorandum while not providing any useful information. We address those requirements with reference to the section numbers in the proposed schedule below.

Description of Real Property

In Section 3 of the proposed Schedule 1 prescribing the disclosure of the Description of Real Property, subparagraph 3(1)(a) would require disclosure of the "property's location, both legal and descriptive". Legal descriptions of real property can be long and complex due to numerous and complicated easements. Further, one of our funds also owns a couple of condominium properties held as purpose-built rental apartment buildings but the legal description of these properties consists of individual legal descriptions for each of the individual condominium units as well as the common elements and runs for over five pages for each property. For most properties, it is submitted that a municipal address is sufficient disclosure to identify the location of the property for the purposes of the offering memorandum.

Subparagraph 3(1)(c) would require the disclosure of any encumbrances but in addition to mortgages, construction liens, tax liens and execution liens, easements are another type of encumbrance against title to a property. As discussed above, the description of easements, which in many cases are utility easements, can be long and complex with references to parts on registered reference plans that provide no useful information to investors. It is submitted that easements should be expressly excluded from the disclosure of encumbrances in subparagraph 3(1)(c).

Subparagraph 3(1)(g) would require disclosure of the entities providing utilities and other services to the property. Given that most utility providers are municipally owned (hydro, water) or heavily regulated (gas, cable, phone) monopolies with no choice available to property owners, it is difficult to understand how this disclosure is of any use to investors.

Subparagraph 3(1)(k) would require disclosure of the occupancy level of property that an issuer leases as at a date not more than 60 days before the date of the offering memorandum. As with all information disclosed in the offering memorandum, occupancy levels should only be disclosed in the offering memorandum if it is material information. For example, the occupancy levels in a portfolio of 50 multi-family residential apartment buildings with thousands of rental units may change on an almost daily basis and is likely not material, particularly when it is "as

of" a date 60 days prior to the date of the offering memorandum and which may be many months before an investor makes an investment decision based on it. Further, if occupancy levels are disclosed in the offering memorandum, is this now considered material information that requires an amendment to the offering memorandum if it changes? Using the apartment portfolio example, if during the 60 day period prior to the date of the offering memorandum, the occupancy level across the portfolio dropped from a disclosed 98% in the offering memorandum to 93% and then increased to 95% on the date of the offering memorandum, would these changes require amendments to the offering memorandum? If not, would the failure to update the offering memorandum with the most recent occupancy level on the issue date constitute a misrepresentation?

The materiality of occupancy levels will differ depending on the type of commercial property (multi-family residential, office, retail, industrial) as well as the particular property. In some instances, the occupancy level may be material as would the length of the term remaining on the leases of major tenants in an office building or retail property but the decision as to the materiality should be left to the issuer who is responsible for providing sufficient information in the offering memorandum to allow investors to make an informed investment decision.

Approvals/Costs and Objectives for Real Estate Development Projects

Sections 8 and 9 in proposed Schedule 1 prescribing disclosures related to *Approvals* and *Costs and Objectives* "if the property is being developed" are problematic as the requirements fail to consider the numerous and different paths that real estate development projects may proceed. For many real estate development projects, much of the information that would be required to be disclosed under the proposed Schedule is simply not known and cannot be known at the time the offering memorandum is prepared and the money is raised. This is largely due to the uncertainties of the development approval process which can involve significant negotiations with numerous governmental authorities at all three levels of government. The product of these negotiations can and often do impact the nature and timing of the development. These proposed disclosure requirements may effectively prohibit the use of the Offering Memorandum Prospectus Exemption to raise capital for real estate development projects depriving eligible investors of such investment opportunities. To avoid this result, the disclosures prescribed in these sections should be made subject to an overarching "if known or available" qualification.

Conclusion

We thank you for the opportunity to provide our comments on the Proposed Amendments. Please feel free to contact me or Don Cant, General Counsel and Chief Compliance Officer at dcant@equiton.com if you wish to discuss our feedback further or require additional information.

Yours truly,

EQUITON PARTNERS INC.

[redacted]

Jason Roque
Chief Executive Officer