

## Draft Regulation

Securities Act

(chapter V-1.1, s. 331.1, par. (1), (3), (6), (8), (11), (11.1), (14) and (34))

### Regulation to amend Regulation 45-106 respecting Prospectus and Registration Exemptions - Offering Memorandum Exemption

Notice is hereby given by the *Autorité des marchés financiers* (the "Authority") that, in accordance with section 331.2 of the *Securities Act*, R.S.Q. c. V-1.1, the following Regulation, the text of which is published hereunder, may be made by the Authority and subsequently submitted to the Minister of Finance and the Economy for approval, with or without amendment, after 90 days have elapsed since its publication in the Bulletin of the Authority:

- *Regulation to amend Regulation 45-106 respecting Prospectus and Registration Exemptions.*

CSA Staff Notice 45-314, *Consolidated List of Current CSA Exempt Market Initiatives*, is also published in Section 6.1 of this Bulletin.

### Request for comment

Comments regarding the above may be made in writing by **June 18, 2014**, to the following:

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### Further information

Further information is available from:

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**March 20, 2014**

**Multilateral CSA Notice of Publication and Request for Comment  
Proposed Amendments to  
Regulation 45-106 respecting Prospectus and Registration Exemptions  
Relating to the Offering Memorandum Exemption  
and in Alberta, New Brunswick and Saskatchewan,  
Reports of Exempt Distribution**

**March 20, 2014**

**Introduction**

Each of the Alberta Securities Commission (**ASC**), Autorité des marchés financiers (**AMF**), Financial and Consumer Affairs Authority of Saskatchewan (**FCAA**) and Financial and Consumer Services Commission (New Brunswick) (**FCNB**) (collectively, the **Participating Jurisdictions** or **we**) are publishing for a 90-day comment period proposed amendments (the **Proposed Amendments**) to *Regulation 45-106 respecting Prospectus and Registration Exemptions* (**Regulation 45-106**) primarily relating to the current offering memorandum (**OM**) prospectus exemption (**OM Exemption**) in section 2.9 of Regulation 45-106.

In addition, the ASC, FCAA and FCNB are also publishing for a 90-day comment period, two new proposed forms of report of exempt distribution (**Exempt Distribution Reports**).

The Ontario Securities Commission (**OSC**) is concurrently publishing proposals relating to the OM Exemption and Exempt Distribution Reports.

Staff of the Participating Jurisdictions and the OSC have coordinated their efforts in developing proposals relating to the OM Exemption and, as applicable, the Exempt Distribution Reports.

Although there is a significant degree of alignment among the jurisdictions proposing changes to the OM Exemption, the FCNB and OSC are proposing a somewhat different version than that being proposed by the AMF, ASC and FCAA. Both versions are reflected in the Proposed Amendments published with this Notice.

The OM Exemption is an exemption designed to facilitate early stage and small business financing. Not surprisingly, this type of financing often tends to be quite local in nature. Consequently, differences in approach among jurisdictions can very appropriately reflect differences in local capital markets. However, harmonized securities regulation continues to be a goal of the members of the CSA and we are therefore interested in public comment on both the relative merits of the different approaches to the OM Exemption and the extent to which harmonization needs to be a priority in this area of securities regulation.

The content of the proposed new Exempt Distribution Reports are harmonized as among the ASC, FCAA, FCNB and OSC; however, in Ontario, the forms will be required to be submitted electronically.

In addition to proposing an OM Exemption and new Exempt Distribution Reports, the OSC's publication also proposes two prospectus exemptions that already exist, although in a somewhat different form, in each of the other CSA jurisdictions, i.e., the family, friends and business associates exemption and the existing security holder exemption.

Although the text of the Proposed Amendments includes the OSC's proposed changes to the family, friends and business associates (**FFBA**) exemption in section 2.5 of Regulation 45-106, it reflects that the Participating Jurisdictions are not proposing to adopt the OSC's proposed variations to the exemption at this time and are maintaining the current form of FFBA exemption.

Effective March 14, 2014, a harmonized existing security holder exemption, published under Multilateral CSA Notice 45-313 *Prospectus Exemption for Distributions to Existing Security Holders* was adopted in all jurisdictions of the CSA other than the Newfoundland and Labrador and Ontario through local blanket orders or rules. The OSC's proposed existing security holder exemption is very similar to the version existing in the other CSA jurisdictions but does propose some modifications.

We are interested in public comment in respect of the OSC's proposed variations on the FFBA exemption and the existing security holder exemption.

Concurrently with publication of this notice, various members of the CSA, including the Participating Jurisdictions other than the ASC, have published for comment one or more proposed prospectus exemptions and associated dealer registration or dealer registration exemption proposals with respect to securities-based crowdfunding. Although the ASC has not published those proposals, the ASC will be considering the public comment in respect of them.

The text of the Proposed Amendments is published with this notice and will be available on websites of the Participating Jurisdictions at:

[www.albertasecurities.com](http://www.albertasecurities.com)  
[www.fcaa.gov.sk.ca](http://www.fcaa.gov.sk.ca)  
[www.fcnb.ca/securities\\_1.html](http://www.fcnb.ca/securities_1.html)  
[www.lautorite.qc.ca](http://www.lautorite.qc.ca)

In Alberta, New Brunswick and Saskatchewan, the proposed Reports of Exempt Distribution are also published with this notice.

## **Substance and Purpose**

### **Proposed amendments**

In Alberta, Québec and Saskatchewan, the Proposed Amendments contemplate the following:

- to limit the risks associated with an investment by a retail investor in illiquid securities, new caps on the aggregate amount that can be sold to any one investor under the OM Exemption in a 12 month period have been proposed:
  - \$10,000 in respect of all investors who are not eligible investors; and

- \$30,000 in respect of investors who are individuals that are not accredited investors and who do not qualify as specified family members, close personal friends or close business associates under the FFBA exemption;
- to provide investors with the same rights of action in respect of all disclosure made in relation to a distribution under the OM Exemption, a requirement that all marketing materials relating to a distribution under an offering memorandum be deemed to form part of an offering memorandum and be required to be incorporated by reference; and
- to provide investors with an opportunity to monitor the use by an issuer of the funds it raises, a requirement that an issuer provide ongoing annual audited financial statements and specified disclosure of its use of proceeds derived from distributions under the OM Exemption.

### **Reports of exempt distribution**

In order to enhance the ability to monitor use of capital-raising prospectus exemptions and the parties involved in them and to better inform their policy-making, the ASC, FCAA and FCNB are proposing two new Exempt Distribution Reports, one in respect of investment funds and one in respect of other issuers. These Exempt Distribution Reports would replace the current Form 45-106F1 *Report of Exempt Distribution* (**Form 45-106F1**). The proposed Exempt Distribution Reports are harmonized with the electronic forms being proposed by the OSC.

For distributions under certain exemptions (including the accredited investor and minimum amount exemptions), investment funds currently have the option to report annually within 30 days after their financial year-end instead of within 10 days after a distribution. The ASC, FCAA and FCNB are proposing to increase the alternative frequency of the filing requirement for investment funds from annually to quarterly within 30 days after each calendar quarter. This corresponds with the proposal of the OSC.

Although the ASC and FCAA are proposing to adopt these two new forms of Exempt Distribution Report, to alleviate the potential regulatory burden to an issuer when having to file multiple types of forms in multiple jurisdictions, the ASC and FCAA are proposing to permit, in certain circumstances, for a transitional period, the current Form 45-106F1 to be filed.

### **Differences from FCNB and OSC proposals**

The proposals of the FCNB and OSC in respect of the OM Exemption are very similar to the proposals of the AMF, ASC and FCAA; however, the FCNB and OSC proposals contain certain variations, including:

- that an issuer using the OM Exemption cannot be an investment fund or related to a registrant involved in the offering;
- a different definition of “eligible investor” which contemplates,
  - a change in the net asset test in respect of an individual, and
  - removal of the net income test for non-individuals;

- that an issuer that uses the OM Exemption must provide notice of certain significant events to its security holders, within 10 days of occurrence; and
- a different form of risk acknowledgement which will only be required to be obtained from individuals who are not permitted clients.

The AMF, ASC and FCAA are not proposing to adopt this new form of risk acknowledgement proposed by the FCNB and OSC; however, to avoid requiring issuers to use different forms in different circumstances, the ASC proposes to allow that form to be used in certain circumstances.

Although the AMF, ASC and FCAA are not proposing to adopt the variations to the OM Exemption proposed by the FCNB and OSC, we are interested in feedback in respect of them and will consider the comments in exploring further areas of harmonization.

The OSC is also publishing proposed changes to *Policy Statement to Regulation 45-106 respecting Prospectus and Registration Exemptions (Policy Statement 45-106)*. The Participating Jurisdictions are not publishing the proposed changes to the companion policy at this time; however, during the comment period we will be considering the OSC's proposed changes with the goal of ultimately publishing a harmonized Policy Statement 45-106.

#### **Next steps**

We contemplate a two-phased approach to amending the OM Exemption. In this first phase, we propose to change the terms of the prospectus exemption. In the second phase, our goal is that members of the CSA engage in revisiting both the offering memorandum form disclosure requirements and work towards a harmonized risk acknowledgement form.

#### **Background**

The Participating Jurisdictions have been reviewing use of the OM Exemption in their respective jurisdictions and have worked with staff of the OSC in developing the Proposed Amendments and, in Alberta, New Brunswick and Saskatchewan, the Exempt Distribution Reports.

Further information regarding the local experience with the OM Exemption in each of Alberta, Québec and Saskatchewan is set out in Annex A to this Notice.

#### **Summary of the Proposed Amendments**

In New Brunswick, a summary of the Proposed Amendments of the FCNB will be published with this Notice. Unless otherwise stated, the following is only a summary of the Proposed Amendments in Alberta, Québec and Saskatchewan.

#### ***Eligible investor test***

The AMF, ASC and FCAA are not currently proposing a change to the “eligible investor” definition.

Currently, one of the ways an investor can qualify as “eligible investor” is if his or her net assets are at least \$400,000. Based on Statistics Canada data it would appear that if investors are

qualifying as “eligible investors” based on a net asset test, there are very few who could do so without including their principal residence. To reduce the risk to individuals with incomes below \$75,000 mortgaging their homes to invest in exempt market securities, we considered excluding an investor’s principal residence from the net asset test and have considered whether, in that case, the net asset threshold should be adjusted.

After further consideration, the AMF, ASC and FCAA determined not to propose excluding principal residence at this time but instead are seeking public feedback on this matter. Factors that influenced that decision include the following:

- the \$30,000 investment cap, discussed below, limits the potential exposure of an investor to a risky investment;
- excluding principal residence may treat investors with similar net worth differently depending upon the types of assets they choose to hold; and
- implications to capital raising.

We anticipate conducting further research and analysis in respect of the implications of excluding principal residence.

#### *Annual limits on distributions to investors*

##### *Non-eligible investors*

Currently, distributions to investors who do not qualify as “eligible investors” are subject to a \$10,000 limit per distribution<sup>1</sup>. The AMF, ASC and FCAA are proposing to revise this requirement so that the limit is not per distribution but rather an aggregate limit that would apply to investments in any issuer by an investor under the OM Exemption in the preceding 12 month period.

Investors will continue to be able to qualify as “eligible investors” on the basis of investment advice from an investment dealer.

The introduction of a 12 month limit as opposed to a per distribution limit is intended to address concerns that the purpose of the \$10,000 cap may, in some cases, be circumvented by non-eligible investors investing in excess of \$10,000 through successive investments in the same or related issuers.

##### *Eligible investors*

Currently, there is no limit on the amount that an eligible investor can invest. Based on a review of investments under the OM Exemption in Alberta over a two year period, the median total annual investment by eligible investors under the OM Exemption is less than \$30,000. However, in some cases, investors made very significant investments in a year.

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<sup>1</sup> The FCNB and OSC proposals contemplate that this limit would only apply to individuals.

The AMF, ASC and FCAA propose to impose a \$30,000 limit on the amount that can be raised by an issuer from an eligible investor who is *an individual*. The calculation of the \$30,000 would include investments in any issuer by an individual investor under the OM Exemption in the preceding 12 months. A \$30,000 annual investment represents a significant portion of the net income or net assets of an individual that is not an accredited investor.

In calculating this limit, investments made under other prospectus exemptions would not be counted and this limit will not apply to individuals investing under the OM Exemption who would qualify to invest under the accredited investor or FFBA exemption<sup>2</sup>. The limit will also not apply to non-individual eligible investors, such as companies. They will continue to be able to invest an unlimited amount under the OM Exemption.

### ***Marketing materials***

The Participating Jurisdictions have proposed that any marketing materials used in connection with a distribution under the OM Exemption be incorporated by reference into the OM so that there is statutory liability for a misrepresentation. We have included a definition of marketing materials in the Proposed Amendments. The AMF, ASC and FCAA have proposed that the marketing materials be filed with securities regulators<sup>3</sup>.

### ***Ongoing annual disclosure***

When the OM Exemption was first being considered for adoption, some form of ongoing financial disclosure requirement was considered. However, we concluded that it was not necessary as we thought most small issuers would be subject to annual financial statement requirements under applicable corporate law. This assumption has proven inaccurate. Many issuers using the OM Exemption are not organized under business corporation's statutes and are not subject to an annual financial statement requirement.

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<sup>2</sup> The FCNB and OSC proposals do not contemplate that an individual who qualifies under the FFBA exemption could exceed the cap under the OM Exemption. However, those individuals could continue to invest under the applicable FFBA exemption.

<sup>3</sup> The FCNB and OSC proposals contemplate that these documents be delivered to securities regulatory authorities.

In the absence of financial statements, security holders are unable to assess how the financing proceeds have been used. Accordingly, the Participating Jurisdictions have proposed a requirement that an issuer relying on the OM Exemption prepare annual financial statements within 120 days of its financial year end. We also propose that a discussion of the use of proceeds accompany the financial statements.

This ongoing disclosure would be required to be filed with securities regulators in Alberta, Québec and Saskatchewan and either provided to or made available to security holders, e.g., through a website. Although we are contemplating a filing requirement, because these issuers would not be reporting issuers we will consider keeping them private and are reviewing alternatives in that regard<sup>4</sup>. With respect to making the disclosure available to security holders, we contemplate that an issuer could use a password protected website to give security holders access to the disclosure without making the disclosure generally publicly available. We have proposed that this ongoing disclosure requirement continue until the earlier of the issuer (1) becoming a reporting issuer and (2) ceasing to carry on business.

The goal of the AMF, ASC and FCAA in requiring this ongoing disclosure is not to create a quasi-reporting issuer regime. We recognize most users of the OM Exemption are non-reporting issuers and that therefore securities acquired by investors are subject to indefinite resale restrictions and there is very limited ability for a security holder to resell securities in these circumstances. Consequently the rationale for requiring this ongoing disclosure is not to provide security holders with the information on which to make an informed investment decision. We contemplate the ongoing disclosure as a means of introducing accountability to issuers that rely on the OM Exemption with respect to the use of proceeds. It also creates a level playing field so that there is not an incentive to use a non-corporate structure to avoid reporting obligations.

The Participating Jurisdictions have proposed that the annual financial statements be audited and that the issuer be required to comply, as if it were a reporting issuer, with either:

- Part 4.1 of *Regulation 51-102 respecting Continuous Disclosure Obligations* and *Regulation 52-107 respecting Acceptable Accounting Principles and Auditing Standards* for an issuer that is not an investment fund; or
- in Alberta, Québec or Saskatchewan, *Regulation 81-106 respecting Investment Fund Continuous Disclosure* for an issuer that is an investment fund<sup>5</sup>.

This means that the annual financial statements will generally be required to be prepared in accordance with International Financial Reporting Standards (**IFRS**). This approach to ongoing financial statement disclosure is consistent with what is required of an issuer when preparing financial statements for inclusion in an OM. Similarly, the requirement to have the ongoing financial statements audited is also consistent with the annual financial statement requirements in the OM form and the requirements under corporate law in some jurisdictions.

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<sup>4</sup> The FCNB and OSC proposals contemplate that these documents be delivered to securities regulatory authorities.

<sup>5</sup> The FCNB and OSC propose to make the exemption unavailable to investment funds.



We are mindful of the fact that additional continuous disclosure obligations increase the cost of using the OM Exemption, reducing the cost benefit intended to be associated with it. We are interested in public comment on the cost implications of such requirements.

***Limits on types of securities***

The Participating Jurisdictions propose to restrict the OM Exemption so that it is not available for the distribution of complex securities, i.e., specified derivatives and structured finance products<sup>6</sup>. This reflects the policy objectives of the exemption, i.e., focusing on financing efforts of small businesses and providing retail investors with a simplified plain language disclosure document describing the business and associated risks.

***Reports of exempt distribution***

The ASC, FCAA and FCNB are proposing to adopt two new forms of Exempt Distribution Report, Form 45-106F10 for investment funds and Form 45-106F11 for other issuers. These proposed Exempt Distribution Reports have been harmonized with the disclosure requirements proposed by the OSC. The mechanism for submitting the information will differ from the OSC as the OSC will require the forms to be filed electronically through the OSC's electronic filing system.

For distributions under certain exemptions (including the accredited investor and minimum amount exemptions), investment funds currently have the option to report annually within 30 days after their financial year-end instead of within 10 days after a distribution. The ASC, FCAA and FCNB are proposing to increase the alternative frequency of the filing requirement for investment funds from annually to quarterly within 30 days after each calendar quarter. This corresponds with the proposal of the OSC.

The ASC and FCAA recognize that the addition of new forms of Exempt Distribution Reports could increase the regulatory burden for issuers conducting distributions in multiple jurisdictions. In order to alleviate this additional burden the ASC and FCAA are proposing for an interim period to accept an Exempt Distribution Report in the current Form 45-106F1 if the distribution is also in a jurisdiction that continues to require Form 45-106F1. We are reviewing whether we can also accept the Form 45-106F6 required to be filed in British Columbia.

The AMF is not proposing at this time to adopt the new forms of Exempt Distribution Reports or to make any changes to the filing deadline for the filing of Exempt Distribution Reports by investment funds. However, the AMF is interested in feedback in respect of these proposals.

In phase 2, we hope to seek further harmonization within the CSA in respect of Exempt Distribution Reports.

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<sup>6</sup> The FCNB and OSC contemplate additional restrictions e.g., excluding investment funds.

### **Questions on Proposed Amendments**

We would appreciate feedback on the Proposed Amendments generally, as well as on the following questions:

1. Under the current framework in Alberta, Québec and Saskatchewan, both individual and non-individual investors are subject to the \$10,000 annual investment limit if they do not meet the definition of an eligible investor. Should non-individual investors, such as companies, be subject to the \$10,000 limit if they do not qualify as an eligible investor? Please explain.
2. Are there circumstances where it would be suitable for an individual eligible investor who is not an accredited investor and not eligible to invest under the FFBA exemption to invest more than \$30,000 per year under the OM Exemption? If so, please describe them.
3. Given the costs associated with doing so, how likely is it that an individual would create a corporation or other entity to circumvent the \$30,000 cap?
4. Investors who do not qualify as eligible investors based on net income or net assets can qualify as eligible investors on the basis of advice from a registered investment dealer. In what circumstances do investors actually seek and receive advice from a registered investment dealer? Does this introduce any complications or difficulties?
5. The eligible investor definition includes persons that have a net income of \$75,000 and persons that have net assets of \$400,000. These income and asset thresholds currently apply equally to individual and non-individual investors, such as companies.
  - a. Should the \$75,000 income threshold only apply to individuals? If so, please explain.
  - b. Should the net asset amount exclude the value of the principal residence for individual investors? If so, should the \$400,000 net asset threshold be lowered as a result?
  - c. Should pensions be included in the net asset test under the OM Exemption? Please provide the basis for your answer.
6. The FCAA would appreciate feedback on whether lawyers and public accountants should continue to be considered “eligibility advisers” in Saskatchewan for purposes of the OM Exemption? Please provide the basis for your opinion.
7. How common is it for an issuer that relies on the OM Exemption to make annual financial statements available to security holders?
  - a. How is this done? Are they delivered?
  - b. Are those financial statements typically audited?

- c. If the financial statements are not typically audited, is there an auditor involved and, if so, what standard of engagement is typically applied?
  - d. Do issuers that prepared financial statements in accordance with IFRS for inclusion in their OMs typically continue to prepare financial statements in accordance with IFRS or do they transition to generally accepted accounting principles for private enterprises (ASPE)?
  - e. Is it common for security holders to request annual financial statements? Do they request audited financial statements?
  - f. What do you estimate as the annual cost of preparing the proposed audited annual financial statements?
  - g. Do you anticipate that issuers will mail annual financial statements to security holders or place them on a website?
  - h. What do you estimate as the cost of making annual financial statements available to security holders?
8. Under the Proposed Amendments, issuers relying on the OM Exemption would be required to deliver annual financial statements until the issuer either becomes a reporting issuer or ceases to carry on business. Are there other situations when it would be appropriate to no longer require ongoing annual financial statements for such issuers? If so, please describe them.
9. How do issuers relying on the OM Exemption typically communicate with their security holders? Do they maintain websites?
10. Should issuers be permitted to cease providing annual financial statements to their security holders after proceeds of a distribution are fully spent? If so, is there a period of time after which it is reasonable to assume that the proceeds of a distribution under the OM Exemption will have been fully spent?
11. Should non-individual investors (e.g., companies or trusts) be required to sign a risk acknowledgment form? Please explain.
12. Should “permitted clients<sup>7</sup>”, as defined in *Regulation 31-103 respecting Registration Requirements, Exemptions and Ongoing Obligations* be required to sign a risk acknowledgement form? Please explain.

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<sup>7</sup> The term permitted client is defined similarly to the term “accredited investor” but imposes higher financial thresholds, for example, in order to qualify as an accredited investor based on assets an individual would require \$1 million in net realizable financial assets. To qualify as a permitted client the individual would require \$5 million in net realizable financial assets.

13. Should non-redeemable investment funds continue to be permitted to use the OM Exemption?
14. Are there certain types of issuers that should be excluded from using the OM Exemption?
15. Should issuers that are related to registrants that are involved in the sale of the issuer's securities under the OM Exemption be permitted to continue using the OM Exemption?
16. Currently, most CSA jurisdictions that have an OM Exemption have adopted local blanket orders that permit an issuer to raise up to \$500,000 under the OM Exemption without having to include audited financial statements in the OM. Further, the blanket orders permit the financial statements to be prepared in accordance with ASPE rather than IFRS.
  - (a) Should these blanket orders be continued or revoked? Please provide the basis for your answer.
  - (b) If you believe the blanket orders should be continued, should the same threshold amount be used in determining which issuers are subject to an ongoing annual financial statement requirement or an audit requirement? Please provide the basis for your answer.

### **Request for comments**

We welcome all comments on the Proposed Amendments and the proposed Exempt Distribution Reports.

Please submit your comments in writing on or before **June 18, 2014**. If you are not sending your comments by email, please send a CD containing the submissions (in Microsoft Word format).

Please note that comments received will be made publicly available and posted on the websites of the AMF at [www.lautorite.qc.ca](http://www.lautorite.qc.ca) and the ASC at [www.albertasecurities.com](http://www.albertasecurities.com) and may be posted on the websites of certain other securities regulatory authorities. You should not include personal information directly in comments to be published. It is important that you state on whose behalf you are making the submission.

Please **address** your submission as follows:

Alberta Securities Commission  
Autorité des marchés financiers  
Financial and Consumer Affairs Authority of Saskatchewan

Please **deliver** your comments **only** to the two addresses below. Your comments will be distributed to the other participating jurisdictions.

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### 3. Questions

Please refer your questions to any of the following:

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## **Annex A**

### **Background – Local Experience with OM Exemption**

#### **Alberta**

Over the last three years, ASC Corporate Finance compliance staff has conducted a review of various OMs filed with the ASC under the OM Exemption. In addition, ASC staff conducted a detailed review of purchaser-level information from Exempt Distribution Reports filed in respect of distributions under the OM Exemption.

As a result of the reviews conducted, staff made a number of observations regarding how the OM Exemption was being used. ASC staff also considered Statistics Canada data regarding income and net worth information and compared that against what was observed in respect of use of the OM Exemption to better understand how the exemption was being used. The observations and statistical information were considered against the policy goals for the OM Exemption and gave rise to consideration of a number of possible changes to the OM Exemption. This review also resulted in recommendations regarding changes in the data required to be reported on Exempt Distribution Reports.

Some of the recommendations that developed out of this review are reflected in the Proposed Amendments. Other recommendations are contemplated to be addressed in a second phase. Recommendations that we contemplate addressing in a second phase relate primarily to disclosure enhancements to the form of offering memorandum. We also hope to address harmonized form requirements in respect of risk acknowledgements and Exempt Distribution Reports. Other possible changes, including some of those concurrently being proposed by the OSC, have been or are being considered.

#### ***Some observations about use of the OM Exemption in Alberta***

The following summarizes some of the observations by ASC staff on use of the OM Exemption in Alberta.

- The OM Exemption is the second most frequently used “capital-raising” prospectus exemption in Alberta (41% of distributions in 2012 were made under the OM Exemption) although the value of the securities distributed (\$0.5 billion in 2012) was 3.8% of the total.
- The exemption is used almost exclusively by non-reporting issuers.
- 77% of the 287 issuers raising money in Alberta in 2011 and 2012 under the OM Exemption were Alberta-based.
- In 2011 and 2012, there was approximately \$824 million raised by 223 Alberta-based issuers under the OM Exemption. Approximately 155 or 70% of issuers self-reported their industry category as real estate or mortgage-investment corporations (MIC). These real estate and MIC issuers raised 76% of the total amounts raised by Alberta-based issuers under the OM Exemption.

- Of the purchasers under the OM Exemption in 2011 and 2012:
  - 90.5% were individuals;
  - 5.9% were corporations;
  - 1.7% were limited partnerships; and
  - 1.6% were trusts.
- Approximately 61% of the individual investors made at least one purchase in an amount **greater than \$10,000**, suggesting, assuming compliance, that they qualified as “eligible investors”. These purchases represented approximately 90% of the total value of purchases by individuals.
- Approximately 39% of the individual investors purchased in amounts **not exceeding \$10,000**. These individuals may or may not be eligible investors.
- The average size of an investment by an *individual* investor (assumed to be an “eligible investor” because of an investment of more than \$10,000) in 2011 and 2012 was approximately \$45,700 and \$47,900 respectively, while the median was approximately \$26,200 and \$27,500 respectively. (These amounts were higher for non-individuals.) Approximately 24% of eligible investors purchased more than \$50,000 and approximately 8% purchased more than \$100,000 per year. The following is a further breakdown of the total number of individuals that invested in 2011 or 2012 \$50,000 or more in a single year under the OM Exemption:
  - 1773 individuals invested between \$50,000 and \$99,999;
  - 816 individuals invested between \$100,000 and \$249,999;
  - 122 individuals invested between \$250,000 and \$499,999; and
  - 26 individuals invested in excess of \$500,000.
- The ASC has received numerous complaints from investors that have invested significant amounts under the OM Exemption and incurred significant losses.
- While approximately 68.7% of individuals made only a single investment over 2011 to 2012, the following % of individuals made multiple purchases:
  - 20% made 2;
  - 5.6% made 3; and
  - 5.8% made 4 or more.
- Where individuals made multiple purchases, their average and median investment, not surprisingly, increased as well.
- Of investors who only invested in amounts of less than \$10,000 (and may be non-eligible investors) 10% in 2011 and 17% in 2012 made repeat purchases resulting in their total investment exceeding \$10,000. Typically the total investment was less than \$25,000 but approximately 111 investors who invested less than \$10,000 per distribution invested in total from \$25,000 to \$100,000 within a calendar year.



- There are a few issuer groups raising the majority of the funds under the OM Exemption in Alberta. Some of these large issuers have “in-house” exempt market dealers selling the securities on their behalf.

*Some Observations regarding Exempt Distribution Reports filed in Alberta*

- Approximately 47% of Exempt Distribution Reports filed in 2011 and 2012 were filed late.
- The current form of Exempt Distribution Report provides limited information, creating monitoring challenges.

*Coordination with the OSC*

ASC staff were aware that the OSC was considering adoption of an OM Exemption and ASC staff therefore shared its observations on the use of the OM Exemption in Alberta with OSC staff. ASC and OSC staff also shared their respective recommendations regarding the OM Exemption and Exempt Distribution Reports and efforts were made to coordinate the recommendations and our respective publications for comment.

**Québec**

AMF staff has been reviewing use of the OM Exemption for the past few years and has not found significant problems with it in Québec. The AMF has found that the OM Exemption is not as widely used by its market participants as other capital raising prospectus exemptions. Some concerns that had been identified are reflected in the changes made to the Exempt Distribution Reports published in the CSA’s February 27, 2014 Notice of Publication.

From a policy perspective, the AMF shares most of the recommendations made by the ASC staff following their review of the OM Exemption in Alberta and has worked closely with staff of the other CSA jurisdictions in drafting changes to the OM Exemption.

Although the AMF is not publishing the proposed Exempt Distribution Reports, these are areas that it has considered and is interested in feedback in respect of them. Following receipt of feedback on the Proposed Amendments and the concurrent FCNB and OSC proposal, the AMF anticipates actively participating in the further review of the OM Exemption in phase 2.

**Saskatchewan**

FCAA staff have also been reviewing use of the OM Exemption locally over the past few years and have participated in the development of CSA and local notices outlining concerns with use of the OM Exemption.