CSA/ACVM Canadian Securities Administrators Autorités canadiennes en valeurs mobilières

# CSA Notice and Request for Comment
# Proposed Amendments to
# National Instrument 45-106 *Prospectus and Registration Exemptions*
# Relating to the Accredited Investor and
# Minimum Amount Investment Prospectus Exemptions

February 27, 2014

## Introduction

The Canadian Securities Administrators (**CSA** or **we**) are publishing for a 90-day comment period proposed amendments **(**the **Proposed Amendments**) to National Instrument 45-106 *Prospectus and Registration Exemptions* (**NI 45-106**).

If adopted, the Proposed Amendments would, among other things:

- require persons relying on the accredited investor prospectus exemption in section 2.3 of NI 45-106 and section 73.3 of *Securities Act* (Ontario) (**the AI Exemption**) to obtain a signed risk acknowledgement in Form 45-106F9 *Risk Acknowledgement Form for Individual Accredited Investors* (**Form 45-106F9)** from certain individual accredited investors who are not permitted clients,
- restrict the minimum amount investment prospectus exemption in section 2.10 of NI 45-106 (**the MA Exemption**) to distributions to non-individual investors, and
- amend the definition of accredited investor in Ontario to allow fully managed accounts to purchase investment fund securities using the managed account category of the AI Exemption, as is permitted in other Canadian jurisdictions.

The text of the Proposed Amendments is contained in Annexes D and E of this notice and will also be available on websites of CSA jurisdictions, including:

www.lautorite.qc.ca
www.albertasecurities.com
www.bcsc.bc.ca
www.nssc.gov.ns.ca
www.fcnb.ca
www.osc.gov.on.ca
www.fcaa.gov.sk.ca
www.msc.gov.mb.ca

## Substance and Purpose

The Proposed Amendments are intended to address concerns that:

- some individual investors may not understand the risks of investing under the AI Exemption or may not in fact qualify as accredited investors

- the threshold of $150,000 in the MA Exemption may not be a proxy for sophistication or ability to withstand financial loss for individual investors and may encourage over-concentration in one investment for an individual investor.

We are not proposing to change the dollar thresholds in either the AI Exemption or the MA Exemption because we concluded that this would not address the identified concerns.

**Background**

The AI Exemption and the MA Exemption have historically been premised on the investor having one or more of

- a certain level of sophistication
- the ability to withstand financial loss
- the financial resources to obtain expert advice
- the incentive to carefully evaluate the investment given its size.

The AI Exemption and the MA Exemption provide cost-effective objective measures for issuers to distribute securities to raise capital or for other purposes. However, the thresholds for individuals to qualify as accredited investors were originally set by the Securities and Exchange Commission (**SEC**) in 1982, and subsequently adopted by the CSA in the early 2000s. The current $150,000 threshold for the MA Exemption was set in 1987. The thresholds have not been changed or adjusted for inflation since.

The CSA conducted a broad review of the AI Exemption and the MA Exemption because of investor protection concerns highlighted by the financial crisis in 2007-2008. On November 10, 2011, the CSA published CSA Staff Consultation Note 45-401 *Review of Minimum Amount and Accredited Investor Exemptions* (the **consultation note**). On June 7, 2012, the CSA published CSA Staff Notice 45-310 *Update on CSA Staff Consultation Note 45-401 Review of Minimum Amount and Accredited Investor Exemptions.*

As part of our broad review, CSA staff reviewed and considered the following information:

- 110 comment letters received on the consultation note
- feedback received during consultation sessions held across Canada
- data relating to the exempt market and the use of the capital raising prospectus exemptions gathered from exempt distribution reports filed in the participating jurisdictions for distributions in 2011
- data compiled from Statistics Canada on Canadian income levels
- input from compliance and enforcement staff about complaints and investigations involving the use of these exemptions
- decisions resulting from enforcement proceedings of securities regulatory authorities involving the exemptions
- guidance issued by CSA members on establishing accredited investor status.

*Review of the AI Exemption*
As a result of this broad review, the CSA learned the following about the AI Exemption:

- The data we gathered confirmed that the AI Exemption is the most relied on capital raising exemption for all issuers (investment funds and non-investment funds; reporting and non-reporting issuers) both in terms of amount of capital invested under it ($134 billion or 90% of the total[1] invested in 2011 by Canadians) as well as number of times relied on for distributions to Canadian investors (64%).

- A common theme in the 110 comment letters received on the consultation note was the need to maintain or increase access to capital. Many commenters expressed concern about any changes to the AI Exemption that may limit access to capital, particularly for small and medium sized enterprises. A majority of commenters supported keeping the AI Exemption at its current income and asset thresholds. Approximately one-third of commenters supported decreasing the thresholds to encourage new capital investment.

- Very few Canadians meet the current thresholds to be accredited investors. Approximately 1.1% of Canadians met the net income test in 2011. Increasing the income threshold to $245,000 to account for inflation since 2001 would reduce that number by almost one-third (only 0.7% of Canadians had income of $250,000 and over in 2011). (Statistics Canada, Table 111-0008, representing individuals that filed a tax return in Canada).

- Most enforcement hearings involving the AI Exemption focused on whether the investors properly met the accredited investor test. In many cases, the investors were not informed about the details of the tests or the risks of purchasing under a prospectus exemption.

*Review of MA Exemption*
The CSA learned the following about the **MA Exemption** from our broad review:

- The MA Exemption raises the second highest amount of capital ($5.6 billion or 3.7% of total[1] invested in 2011 by Canadians), after the AI Exemption. However, when we considered the number of times investors invested under the MA Exemption, we found it was relied on less than 1% of the time for distributions to Canadian investors. This is less frequently than other "capital raising" exemptions, such as the AI Exemption, the family, friends and business associates exemption in section 2.5 of NI 45-106 and the offering memorandum exemption in section 2.9 of NI 45-106.

- Commenters were evenly divided on whether to retain the MA Exemption. Many commenters supported eliminating it because it is philosophically unsound and creates the

[1] A total of $149.5 billion was invested by Canadian investors in investment funds and non-investment fund issuers under the five main prospectus exemptions used for capital raising: the AI Exemption; the family, friends and business associates exemption in section 2.5 of NI 45-106; the offering memorandum exemption in section 2.9 of NI 45-106; the MA Exemption; and the additional investment in investment funds in section 2.19 of NI 45-106.The amount of capital invested in investment fund issuers likely includes funds investing in other funds and investors redeeming in one fund and moving their capital to another fund – it is not limited to new capital invested. Investment funds are not required to reflect redemptions when reporting distributions.

risk that the investor is over-concentrated in one product. Those that supported retaining it told us that it is an efficient, cost effective alternative when the AI exemption is not available.

- The majority of individuals invest between $150,000 and $200,000 when investing under the MA Exemption. When investors can choose how much to invest, they generally invest much less than $150,000. For example, most individuals invest $30,000 or less when investing under the AI Exemption.

- Compliance and enforcement staff in some jurisdictions told us the problems they typically see with the MA Exemption include:
  - situations where the investment is clearly not suitable for the investor;
  - individual investors are encouraged to borrow money to meet the terms of the MA Exemption; and
  - individual investors are pressured to invest $150,000 to participate in an "opportunity" when they would rather invest less.

- While the MA Exemption is not widely used in all jurisdictions or by all industries, it does provide an inexpensive alternative when the investor is not an accredited investor. The exemption works well for certain industries; for example, for the sale of real estate securities such as condominium projects where the condominium unit is valued over $150,000. During consultation sessions, staff of some jurisdictions heard that certain small and medium-sized enterprises may not be able to invest under the AI Exemption because they do not meet the net asset test that applies to corporations (net assets of $5 million).

- We reviewed all Canadian purchasers under the MA Exemption in 2011 and categorized them as individuals or non-individuals. Based on this review, we estimated that individuals investing under the MA Exemption represented less than 1% of the total $149.5 billion invested by Canadians in 2011[2].

**Summary of the Proposed Instrument**

*Proposed amendments to the AI Exemption*

We do not propose to change the income or asset thresholds used in the definition of accredited investor at this time. We will continue to monitor developments in other jurisdictions.

We propose certain amendments to the AI Exemption to address investor protection concerns, particularly that some individual investors may not understand the risks associated with exempt market investments or may not in fact qualify as accredited investors. The following lists all

[2] Represents the amount invested by Canadian investors in investment funds and non-investment fund issuers under the five main prospectus exemptions used for capital raising: the AI Exemption; the family, friends and business associates exemption in section 2.5 of NI 45-106; the offering memorandum exemption in section 2.9 of NI 45-106; the MA Exemption; and the additional investment in investment funds in section 2.19 of NI 45-106.The amount of capital invested in investment fund issuers likely includes funds investing in other funds and investors redeeming in one fund and moving their capital to another fund – it is not limited to new capital invested. Investment funds are not required to reflect redemptions when reporting distributions.

changes we propose to make to the AI Exemption:

1. Individual accredited investors must complete and sign a new risk acknowledgement form, Form 45-106F9 *Risk Acknowledgement Form for Individual Accredited Investors*. Form 45-106F9 describes, in plain language, the categories of individual accredited investor and the protections an investor is renouncing by purchasing under the exemption. The investor would be required to indicate on the Form 45-106F9 which category of accredited investor they satisfy.

2. The Form 45-106F9 requirement would apply to all existing categories of *individual* accredited investor, namely individuals that:
   - earned net income of $200,000, or $300,000 with a spouse, in each of the two most recent calendar years, with a reasonable expectation to exceed that level in the current calendar year,
   - own financial assets (cash and securities – no real estate), alone or with a spouse, in excess of $1 million, or
   - own net assets of at least $5 million.

3. Individual accredited investors who meet the permitted client test under National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (**NI 31-103**) would not be required to complete and sign Form 45-106F9. To be a permitted client, an individual must own financial assets in excess of $5 million. As a permitted client, these individuals are able to waive suitability under subsection 13.3(4) of NI 31-103.

4. Any salesperson or finder, whether registered or not, involved in the trade to the individual investor would be required to complete and sign Form 45-106F9.

5. We propose additional guidance in the Companion Policy on the steps issuers should take to verify accredited investor status, including explaining the different tests and asking questions to obtain factual information from purchasers about their income or assets before discussing the investment.

6. Issuers would be required to identify the category of accredited investor of each purchaser in the report of exempt distribution (Form 45-106F1 and, in BC, Form 45-106F6). This would assist our compliance and enforcement departments when reviewing adherence to the AI Exemption.

7. The definition of accredited investor would be amended to include family trusts established by an accredited investor for his or her family, provided the majority of trustees of the family trust are accredited investors. We propose this amendment to address comments we have received since adopting NI 45-106 as well as on the consultation note, that it seemed inconsistent that an accredited investor could not purchase securities on behalf of a trust established for the benefit of the accredited investor's family.

8. The Ontario Securities Commission (the OSC) proposes to amend the definition of accredited investor to allow fully managed accounts to purchase investment fund securities in Ontario.

Registered advisers of fully managed accounts have a fiduciary duty to investors. A registered adviser of a fully managed account is an accredited investor under the definition of accredited investor in NI 45-106 and can buy all types of securities for the managed account on an exempt basis except, in Ontario, investment fund securities. A number of investment management industry participants commenting on this carve-out supported its removal, for the following reasons:

- a portfolio manager's proficiency and fiduciary obligation to the investor serve as adequate investor protection,
- managed account clients should have the benefit of the exemption whether investing in securities directly or through an investment fund, and
- it would harmonize the managed account category of the AI Exemption across Canada.

*Proposed amendment to the MA Exemption*
We propose that the MA Exemption be amended so that it is only available for distributions to non-individuals to address investor protection concerns associated with the use of the exemption to distribute securities to individual investors.

*Other proposed amendments*
We propose to amend the form of **report of exempt distribution** (Form 45-106F1 and, in BC, Form 45-106F6) to gather additional information, particularly:

- the category of accredited investor for each purchaser
- updated industry categories
- more information on any person being compensated in connection with the distribution, including identifying which purchasers the person was compensated for.

This additional information will assist our compliance and data gathering functions. Having more information about the types of issuers using these exemptions will enable us to more effectively understand and regulate this market.

We are also making **housekeeping changes** resulting from the removal of the dealer registration exemptions (formerly Part 3 of NI 45-106) effective March 27, 2010 to reflect the adoption of NI 31-103. These include changing the title of NI 45-106 from "*Prospectus and Registration Exemptions"* to *"Prospectus Exemptions"* and making consequential amendments to other instruments to recognize the title change.

**Impact on Investors**

The Proposed Amendments are intended to enhance investor protection.

The amendments to the AI Exemption, except those to the definition of accredited investor in connection with fully managed accounts and family trusts, would help individual investors understand whether they qualify as accredited investors and the risks of investing in the exempt market.

The OSC's proposed amendment to the definition of accredited investor to allow fully managed accounts to purchase investment fund securities in Ontario would permit fully managed accounts

to purchase all securities on an exempt basis, including investment fund securities.

The amendment to the definition of accredited investor to include family trusts would permit an accredited investor to establish a family trust for the benefit of his or her family members.

The amendment to the MA Exemption is intended to reduce the risk of individual investors over-concentrating their investable assets in one investment while retaining the efficiency of the exemption for corporate and institutional investors. It also addresses our concern that the amount invested is not a good proxy for sophistication or the ability to withstand financial loss for individual investors.

The amendments to the report of exempt distribution would provide us with more information about this market, enabling us to better regulate by developing more targeted compliance and investor education programs.

**Consequential Amendments**

**National Amendments**
We will consequentially amend the following instruments and companion policies to recognize the change in title of NI 45-106 from "*Prospectus and Registration Exemptions*" to "*Prospectus Exemptions*":

- Companion Policy 11-102CP *Passport System*
- Multilateral Instrument 13-102 *System Fees for SEDAR and NRD*
- National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations;*
- Companion Policy 31-103CP *Registration Requirements, Exemptions and Ongoing Registrant Obligations;*
- Multilateral Instrument 32-102 *Registration Exemptions for Non-Resident Investment Fund Managers*
- National Instrument 33-105 *Underwriting Conflicts*;
- National Instrument 41-101 *General Prospectus Requirements;*
- National Instrument 45-102 *Resale of Securities;*
- Companion Policy 45-102CP *Resale of Securities;*
- National Instrument 51-102 *Continuous Disclosure Obligations;*
- Companion Policy 51-105CP *Issuers Quoted in the U.S. Over-the-Counter Markets*
- National Instrument 52-107 *Acceptable Accounting Principles and Auditing Standards;*
- National Instrument 62-103 *The Early Warning System and Related Take-Over Bid and Insider Reporting Issues;* and
- Multilateral Instrument 62-104 *Take-Over Bids and Issuer Bids.*

**Local Matters**
An annex is being published in any local jurisdiction that is making related changes to local securities laws, including local notices or other policy instruments in that jurisdiction. It also includes any additional information that is relevant to that jurisdiction only.

Both the British Columbia Securities Commission (BCSC) and the Ontario Securities Commission (OSC) are proposing local amendments to NI 45-106. In addition, the OSC is proposing local amendments to National Instrument 45-102 *Resale of Securities* (NI 45-102) and OSC Rule 45-501 *Ontario Prospectus and Registration Exemptions* (OSC Rule 45-501).

The BCSC proposes to amend Form 45-106F6 to gather additional information about issuers, purchasers and persons being compensated for distributions under prospectus exemptions. The BCSC also proposes to amend Form 45-106F6 and add a new section 6.7 to NI 45-106 to codify certain exemptions from the requirements in Form 45-106F6 currently in BC Instrument 45-533 *Exemptions from Form 45-106F6 Requirements.*

The OSC proposes to amend NI 45-106, NI 45-102 and OSC Rule 45-501 to reflect the anticipated coming into force of certain amendments to the *Securities Act* (Ontario) (the OSA). These OSA amendments were originally introduced in Bill 162 *An Act respecting the budget measures and other matters* (Bill 162) in 2009 in conjunction with changes to registration requirements made at that time. The proposed OSA amendments were to be implemented in two phases, and the second phase amendments are now expected to be proclaimed into force. In accordance with the provisions of Bill 162, certain prospectus exemptions currently set out in NI 45-106 or OSC Rule 45-501 were replaced with an equivalent list of statutory exemptions. Assuming the remaining provisions of Bill 162 are proclaimed, the following prospectus exemptions (or elements of these exemptions) currently in NI 45-106 will be moved to the OSA:

- the AI Exemption in subsection 2.3(1) of NI 45-106 will be moved to section 73.3 of the OSA, and
- the private issuer exemption in subsection 2.4(2) of NI 45-106 will be moved to section 73.4 of the OSA.

The local amendments proposed by the BCSC and OSC are reflected in the amendments to National Instrument 45-102 and in the Proposed Amendments to 45-106 (including the forms) presented in Annexes F and D respectively. A more detailed explanation of the proposed local amendments is provided in the relevant annex, which is available on the website of each of the BCSC (www.bcsc.bc.ca) and OSC (www.osc.gov.on.ca).

**Request for Comments**

We welcome all comments on the Proposed Amendments, the companion policy, forms, and consequential amendments.

Please submit your comments in writing on or before May 28, 2014. If you are not sending your comments by email, please send a CD containing the submissions (in Microsoft Word format).

Address your submission to all of the CSA as follows:

British Columbia Securities Commission
Alberta Securities Commission
Financial and Consumer Affairs Authority (Saskatchewan)

Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
Financial and Consumer Services Commission (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
Superintendent of Securities, Nunavut

Deliver your comments **only** to the three addresses below. Your comments will be distributed to the other participating CSA jurisdictions.

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We cannot keep submissions confidential. Please note that all comments received will be posted on the website of the *Autorité des marchés financiers* at www.lautorite.qc.ca and the website of the Ontario Securities Commission at www.osc.gov.on.ca. Therefore, 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.

Thank you in advance for your comments.

**Contents of Annexes**

The following annexes form part of this CSA Notice:

| | |
|---|---|
| Annex A | Overview of Comments Received on CSA Staff Consultation Note 45-401 *Review of Minimum Amount and Accredited Investor Exemptions* |
| Annex B | List of Commenters on CSA Staff Consultation Note 45-401 *Review of Minimum Amount and Accredited Investor Exemptions* |
| Annex C | Summary of Comments on CSA Staff Consultation Note 45-401 *Review of Minimum Amount and Accredited Investor Exemptions* |
| Annex D | Proposed Amendments to National Instrument 45-106 *Prospectus and Registration Exemptions* |
| Annex E | Proposed Changes to Companion Policy 45-106 Prospectus and Registration Exemptions |
| Annex F | Proposed Amendments to National Instrument 45-102 *Resale of Securities* (This amending instrument contains local-only amendments proposed by the OSC.) |

**Questions**

Please refer your questions to any of the following:

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**Annex A**
**Overview of Comments Received on CSA Staff Consultation Note 45-401**
***Review of Minimum Amount and Accredited Investor Exemptions***

On November 10, 2011, CSA staff published CSA Staff Consultation Note 45-401 *Review of Minimum Amount and Accredited Investor Exemptions* (the consultation note). The consultation note provided information about the two exemptions under review and set out 31 consultation questions. The comment period closed on February 29, 2012. We continued to receive comment letters months after the deadline.

We received 110 comment letters and feedback from over 300 people who attended consultation sessions held across Canada. People expressed a wide range of views in the written comments and in the consultation sessions.

We thank everyone for the feedback they provided. We carefully considered the comment letters and feedback we received. Annex B contains a list of the commenters and Annex C contains a summary of the written comments.

## Overview of the written comments

### *The AI Exemption*

The comment letters contained a common theme: the importance of the AI Exemption for raising capital. Many commenters expressed concern about any changes to the AI Exemption that may limit access to capital, particularly for small and medium sized enterprises. Over half of the commenters supported keeping the exemption at its current income and asset thresholds. About a third of the commenters supported decreasing the thresholds to encourage new capital investment.

A few commenters supported increasing the thresholds, mostly to account for inflation. However, an equal number of commenters disagreed with indexing the thresholds to inflation, giving the following reasons:

- the number of Canadians who qualify as accredited investors under the current thresholds is a very small percentage of the population
- inflation is not necessarily the appropriate measure since it does not measure increases in income

A few commenters suggested eliminating the AI Exemption altogether and replacing it with alternative exemptions or adding additional protections.

Commenters were almost evenly divided on whether to require accredited investor status to be certified by an independent third party. A slight majority answered in the negative, for the following reasons:

- it would add another level of costly compliance
- whoever is performing the certification would have to rely on the investor's representations just as issuers and registrants currently do - how would a third party be better able to verify

the truthfulness of the investor
- investors could construe this as intrusive and would resent that their own representations are insufficient
- if an investor certifies that they qualify, that should be sufficient

***The MA Exemption***

Unlike for the AI Exemption, there were divergent views of whether we should repeal the MA Exemption. Commenters were almost evenly divided on this question. Slightly more commenters supported repealing it because:

- it is philosophically unsound - the size of the investment is not relevant to measuring investor sophistication or ability to withstand loss because the investment could represent a significant portion of the investor's financial assets
- it creates a risk that the investor may over-concentrate their investment portfolio in one investment
- it is dangerous for investors – they could lose their entire life savings or be financially destroyed
- many investors under this exemption would also be accredited investors

Those commenters who supported retaining the MA Exemption gave the following reasons:

- it is simple and easy to use
- it provides a useful alternative to the AI Exemption when needed
- regulators should continue to support access to capital by issuers during this difficult economic period
- $150,000 still represents a significant amount for most people and is indicative of having the financial resources to afford advice if they choose.

A slight majority of commenters who responded to this question were **against** indexing the $150,000 threshold to inflation. Their reasons included:

- to adjust for three decades of inflation would have too drastic an impact
- it would exacerbate the over-concentration problem
- the exemption is philosophically unsound – increasing the threshold would only exacerbate the problem
- inflation and consumer price indices are irrelevant because they are measures of purchasing power rather than income or net worth

## Annex B

### List of Commenters on CSA Staff Consultation Note 45-401
### *Review of Minimum Amount and Accredited Investor Exemptions*

Advocis, The Financial Advisors Association of Canada (Greg Pollock and Dean Owen)

AIMA Alternative Investment Management Association (Ian Pember)

Alta West Mortgage Capital Corporation (Dave McKitrick)

AMBA Alberta Mortgage Brokers Association (Dean Koeller and Dave McKitrick)

Association of Canadian Compliance Professionals (Sandra L. Kegie)

Atnikov, Brenna

Bennett Jones (Nicholas P. Fader)

Bentham, Craig L., Barrister and Solicitor

BLG Borden Ladner Gervais LLP (David Surat and Rebecca Cowdery)

British Columbia Technology Industry Association (Bill Tam)

Burnet, Duckworth & Palmer LLP (Shannon Gangl, Steve Cohen, Alyson Goldman and Bill Maslechko)

Calrossie Investment Management Inc. (David Ramsay)

Calvert Home Mortgage Investment Corporation (Dean Koeller)

Campbell, Donald I. - Law Office, Barrister & Lawyer

Canadian Advocacy Council for Canadian CFA Institute Societies, The (Keith Summers, CFA)

Canadian Bar Association (Quebec)

CBG Cawkell Brodie Glaister LLP (Jacob Kojfman)

CBI Group (Travis Cadman)

Cedar Parks Management Corp. (Jesse Bobrowski)

Compliance Support Services (Stephanie A. McManus)

Computershare (Marc Castonguay)

Contact Capital Advisory Corp. (Peter Murray)

Coulter, Jamie and Melillo, David

CSI Global Education Inc. (Marc Flynn)

CUE – Calgary Urban Equities Limited (Jonathan K. Allen)

CVCA Canada's Venture Capital & Private Equity Association

Davies Ward Phillips & Vineberg LLP (Brian Kujavsky)

Dexterity Ventures Inc. (Gena Rotstein)

Doucet McBride Laywers (Harold Geller)

Enlightened Private Capital Inc. (Norman Light)

Exempt Analyst (William McNarland, CFA)

Exempt Market Consultants (Nancy Bacon)

Exempt Market Dealers Association of Canada (Brian Koscak, David Gilkes and Geoffrey Richie)

FAIR Canadian Foundation for Advancement of Investor Rights (Ermanno Pascutto)

Federation of Mutual Fund Dealers (Sandra L. Kegie)

Financial Value Inc./Privest Wealth Management (D. Cameron)

Fiore Financial Corporation (Gordon Keep)

Fraser Milner Casgrain LLP (Tom Houston, Andrea Johnson and Lara Vos Smith)

Front Row Capital Inc. (Craig Burrows)

Full Circle Parenting (Lisa Kathleen)

Fundamental Research Corp. (Brian Tang, CFA)

Gardiner Roberts LLP (William R. Johnstone)

Gluskin Sheff (David R. Morris)

GreensKeeper Asset Management (Michael McCloskey)

Greystone Managed Investment Inc. (Jacqueline Hatherly)

Heathbridge Capital Management Ltd. (Richard M. Tattersall, CFA)

Highstreet Asset Management Inc. (Paul A. Brisson)

IFIC The Investment Funds Institute of Canada (Joanne De Laurentis)

IGM Financial Inc. (Murray J. Taylor)

IIROC (R.J. Corner)

Independent Financial Brokers (John Whaley)

Independent Planning Group (Vince Valenti)

Investment Industry Association of Canada (Susan Copland)

InvestPlus Properties Canada Ltd. (Stuart McPhail)

Kenmar Associates (Ken Kivenko, P.Eng.)

Ly, Micheal

Lytton Financial Inc. (Glenn Gold)

MacDonald, Shymko & Company Ltd. (David Shymko)

MacNicol & Associates Asset Management Inc. (David A. MacNicol)

McCrank Stewart LLP ( David J. Brundige, QC)

McInnes Cooper Lawyers(Basia Dzierzanowska and Jeff Hoyt)

Meckelborg Financial Group Ltd. (J.A. Meckelborg)

Miller Thomson (Susan Han)

Miller Thomson LLP (Greg P. Shannon and Darren M. Smits)

Momentum (Jeff Loomis)

Mutual Fund Dealers Association of Canada (Paige L. Ward)

Network of Angel Organizations – Ontario

Norton Rose Canada LLP (Tracey Kernahen)

Olympia Trust Company (James Bell)

Omniarch Capital Corp. (Jay Modi)

Ontario Bar Association (Philippe Tardif, Brian Pril and Barbara Henrickson)

Optimus US Real Estate Fund (Arthur Wong, P.Eng.)

OSC Investor Advisory Panel (Anita Anand et al)

Paradigm Portfolio Management Company (Kyle Kozuska)

Paradigm Environmental Technologies Inc. (Gordon D. Skene)

Pinnacle Wealth Brokers (Rod Burylo)

Pinnacle Wealth Brokers Inc. (Chris Silverthorn)

Plazacorp Retail Properties Ltd.(Lynda M. Savoie, CA)

Portfolio Management Association of Canada (Katie Walmsley and Scott Mahaffy)

Prestige Capital Inc. (Curtis Potyondi)

Prestigious Properties (Thomas Beyer)

Prospectors and Developers Association of Canada (Philip Bousquet)

Prosperity Development Group Ltd.

Provisus Wealth Management (Peter Webster, CFA)

Purpose Inspired Solutions (Scott Morrison)

Raintree Financial Solutions (D.R. Fournier)

RBC Dominion Securities Inc. (David Agnew) and RBC Phillips, Hager & North Investment Counsel Inc. (Vijay Parmar)

REAP Business Association (Stephanie Jackman)

Reed Pope LLP (R. Keith Reed and Jennifer McGregor-Geer)

Richardson GMP (Leo Purcell)

SecureCare Investments Inc. (Peter Johannes)

Sentinel Financial Management Corp. (Merlin H. Chouinard)

SIPA Small Investor Protector Association (Stan I. Buell)

Sloane Capital Corp. (Stephen Freedman)

Smith Law Corp. (William H. Smith, QC)

Stevenson Hood Thornton Beaubier LLP (Beaty F. Beaubier)

SVX, MaRS Centre for Impact Investing (Annie Malhotra and Adam Spence)

Swizzlesticks Enterprises Ltd. (Ross Hahn)

SWMI Skyline Wealth Management Inc. (Mike Bonneveld)

Tacita Capital Inc. (Michael Nairne)

Thompson, Bruce S.

Tralucent Asset Management (Bill Siddiqui, CA)

VANTEC (Michael C. Volker)

Walton Capital Management Inc. (Mark McKenna)

WealthSpark Inc. (David G.L. McKenzie)

WEMA Western Exempt Market Association (Craig Skauge) (now known as the National Exempt Market Association)

Westcourt Capital Corporation (David R. Kaufman)

White Rabbit Communications (Angela Joyce)

WMCZ Wallace Meschishnick Clackson Zawada

Wolverton Securities Ltd. (Brent Wolverton)

**Annex C**
**Summary of Comments on CSA Staff Consultation Note 45-401 Review of Minimum Amount and Accredited Investor Exemptions.**

**CSA Review of Accredited Investor and Minimum Amount Prospectus Exemptions**
**Summary of Comments**

**Defined terms:**

CSA Staff Consultation Note 45-401 *Review of Minimum Amount and Accredited Investor Exemptions* (the Consultation Note)
National Instrument 45-106 *Prospectus and Registration Exemptions* (NI 45-106)
National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (NI 31-103)
Accredited investor prospectus exemption (AI exemption)
Minimum amount prospectus exemption (MA exemption)
Offering memorandum exemption (OM exemption)

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| **General** | | |
| 1 | **Underlying principles and objectives** | Investors should have a broad choice and access to a wide range of products and professional managers. Key objectives of this review should be to increase the availability of investment choices to as many Canadians as possible and to broaden the pool of investors able to invest in the exempt market.<br><br>The CSA should consider additional policy objectives related to these exemptions such as stimulating economic growth and capital raising.<br><br>The CSA should focus on requirements that increase transparency, awareness of risk, and the availability of information in the exempt market. The exempt market will be ill served by requirements that are likely to limit participation by investors who clearly have the financial resources to withstand loss or obtain expert advice in relation to an exempt investment.<br><br>In order to establish a set of rules that allows issuers to raise capital and to protect investors in the absence of a prospectus, list the objectives that the AI exemption is intended to achieve. The rules for these exemptions should not be so cumbersome as to exclude relatively minor investments in private ventures.<br><br>Investors, in the absence of a prospectus, should be able easily to collect information on a prospective investment.<br><br>Investments, whether sold by prospectus or not, must be deemed to be suitable for investors based on the information collected in the “know your product”, “know your client” and “investment policy statement” (IPS) process.<br><br>The rules should not exclude investors who are informed nor should they include investors who are not informed. The rules should not be assumed to protect investors from their own stupidity or irresponsibility. There are no rules that prohibit someone from investing 100% of their investable assets into a publicly-traded penny stock through a discount broker (i.e. where there is no advisor involved and therefore no suitability analysis undertaken). Similarly, the rules in the exempt market should not |

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| | | be designed to make it impossible for a fully informed investor to invest everything in one issuer or product if the investor believes that is appropriate. In that case, any dealer involved in the sale would have the responsibility to advise against such a trade, but if the investor is determined to make the investment notwithstanding that he or she should have that choice.<br><br>Regulatory regimes should ensure investors and advisors can understand the products in which they invest.<br><br>The regulators need to strike a balance between investor protection and capital raising for small business, however the current system of prospectus exemptions cannot succeed in striking this balance.<br><br>The regulators need to balance competing interests to make sure funding is available at a reasonable cost to small and medium enterprises which may not be able to afford to offer securities by way of a prospectus offering.<br><br>The concept that a prospectus in any significant manner protects investors is flawed as most investors do not read the prospectus.<br><br>While many investors in the exempt market are institutions (such as banks and pension, insurance, or mutual funds), exempt distributions are increasingly being marketed and made available to retail investors. These investors are far more vulnerable than their institutional counterparts because they have no "cushion" and are unable to bear losses to the same degree as institutions. Proportionality between maintaining market efficiency while protecting the interests of retail and institutional investors is critically important.<br><br>Currently, only 1% of Canadians meet the annual income threshold of $200,000 (based on Statistics Canada data). Similarly, approximately 1% of Canadians have financial assets that meet the AI $1 million threshold. The pool of available investors in the exempt market is already very small.<br><br>Consider the type of individuals who invest in the exempt market. They tend to eschew the public markets in favour of smaller, more entrepreneurial ventures (whether speculative or not). It is exactly these types of investors who are most likely to be entrepreneurs themselves; owners of small businesses and income-producing real estate. Additionally, these individuals tend to "live off their company", meaning that their reported personal income is often a bad proxy for their lifestyle or spending power. These are the very people -- successful, educated, sophisticated entrepreneurs -- who are most inappropriately excluded from AI status and therefore unable to make sound investments in exempt market products, even those issued pursuant to an offering memorandum (at least in Ontario, where there is no offering memorandum (OM) exemption). These investors want access to investments they understand. The prospectuses, disclosure documents and financial statements of many public companies often are impenetrable to these individuals. There is no opportunity to meet with senior management in order to assess the soundness of a business model or to survey other qualitative aspects of the business. Rather, these individuals would prefer to have the opportunity to conduct in-person and in-depth due diligence on investment opportunities and managers, and are exactly the sort of people whom we should encourage to invest in small and medium-sized enterprises. |
| | **What is the appropriate basis for the MA and AI exemptions?** | Exemptions should consider the type of issuer issuing the securities, the type of seller involved and the complexity of the security.<br><br>Consider the test applied in the European Union as part of the *Markets in Financial Instruments Directive*. This defines a class of "professional" investors – being investors who possesses the experience, knowledge and expertise to make investment decisions and properly assess associated the risks.<br><br>Persons without exposure to finance (high net worth individuals should not be presumed to have financial training) will often have difficulty understanding certain |

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| | | investments.<br><br>The exemption does not recognize where investors are in their life cycle, which is admittedly difficult to discern because of the changing demographics in Canada.<br><br>Financial asset and income tests are both under-inclusive and over-inclusive. Sophisticated investors may be excluded but unsophisticated investors may be included.<br><br>Although monetary thresholds are not perfect proxies for sophistication, appropriate thresholds likely do bear some relationship to investors' sophistication and ability to withstand loss and provide a measure of investor protection. However, the notion that having a certain level of financial resources is indicative of an ability to withstand loss is simplistic.<br><br>For individuals, the size of an investment in relation to total net worth is the most relevant criteria for determining whether a loss will cause hardship. It may be recommended that no more than 5 to 10% of net worth be invested in private or alternative products.<br><br>Education and work experience are important criteria for determining whether an investment is appropriate. Financial professionals, corporate lawyers and professional accountants all have financial education and experience relevant to evaluating risk. This is because financial and legal education contribute to the ability to do one's own due diligence and helps clarify when external expertise is required. However, other education and work experience can be equally relevant in evaluating a start-up business depending on its focus, for example: patent agents, doctors and dentists or computer sciences training could be relevant.<br><br>The current rationales for the AI exemption cited in the Consultation Note remain appropriate, namely: sophistication, ability to withstand financial loss, resources to obtain expert advice and incentive to evaluate an investment given its size.<br><br>Key investor attributes relevant to determining whether an investor should be able to invest in the exempt market include: investment experience, financial resources, access to information/advice, relevant work experience and education (in that order). The ability to make an informed investment decision is based on experience more than resources.<br><br>No single factor (such as income or net worth) can determine whether or not an investor is sufficiently sophisticated. Requiring the involvement of a professional analyst to provide a sophisticated opinion will resolve this issue. Almost all analysts hold the CFA designation which means they are sophisticated.<br><br>The right question to ask is "what is reasonable disclosure by sales people and issuers in addition to disclosure requirements today?"<br><br>The main purpose of a prospectus is to provide an opportunity for any investor to fully inform him or herself of the risks being assumed with an investment in any security. Investors may or may not choose to read the prospectus. But the fact that such detailed information is *available* is clearly at the heart of the prospectus requirement. The prospectus requirement does not require that an investment is suitable for a given investor. The fact that any investor can open an account with a discount broker and trade without receiving advice on suitability demonstrates this point.<br><br>The notion that an investor's financial resources, educational background, work experience, or investment experience should form the basis of an assumption of eligibility to make any investment under any circumstance is flawed. Rather, these factors should form an integral part of the determination of *suitability* in the eyes of a |

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| | | truly arms-length, third-party registrant at the time of investment.<br><br>The ability to withstand financial loss: This is a valid premise and a good contrast to the concept of sophistication. For example, a person who lacks the "sophistication" or the knowledge and experience to assess the risk of an investment may not care, as they have the financial means to suffer the loss of their investment. We think this premise opens up another valid and important scenario that doesn't exist under the current prospectus exemptions. A person of moderate financial resources, e.g. a person that does not meet the current financial tests of an Accredited Investor, may be willing to suffer the loss on a smaller investment that represents say only 10% of their total liquid net worth for the potential of a significant capital gain. The current regulations for the exempt market restrict many Canadians from participating even in smaller amounts and we do not believe this is ultimately in the public interest but privileges the wealthy. In this scenario, the level of sophistication becomes less relevant. The question is what constitutes the ability to withstand risk and what is the appropriate proxy?<br><br>It is our opinion that the MA exemption and the AI exemption should be based on an individual's financial resources and/or investment knowledge (i.e. registered as a financial advisor, fund manager, etc.).<br><br>After reading the definition of an accredited investor in NI 45-106 I have made the assumption that there is really no issue with the majority of the parties on the list since most would be or have investment professionals that are registered and regulated within the securities industry as staff. I am focusing my comments on the AI's that would be individuals outside the investment industry and possibly corporate entities that are sole proprietorships or are holding companies for families or trust with few beneficial holders. The difficulty in assessing each of the criteria, is that depending on the degree the criteria applies to an individual or is present/lacking, should probably not disqualify the person from making the investment in some circumstances. The issue is that although each criteria may have a quantitative or measurable value (the objective aspect), there may be (or should be) some subjectivity in weighting each of them to arrive at a decision on whether an individual qualifies to use the AI exemption. If the participants were to rank the list given or to add or subtract from the list what would that list look like? Financial resources (ability to withstand financial loss or obtain expert advice these are probably mutually exclusive and the ability to obtain expert advice should be a separate item on the list); access to financial and other key information about the issuer (and the ability to interpret the information); educational background (and in what areas); work experience (and its relevance to business of the issuer), investment experience, or age (would it not be a factor in considering some of the above if the person was retired vs. just starting out in the work force)(or is this falling into the realm of discrimination?)<br><br>Primarily an arbitrary number of any amount is a poor gauge of suitability. It should be the individual's responsibility and choice to invest the appropriate amount for them based on their financial situation.<br><br>As it pertains to the objective of protecting the unsophisticated investor, there are limited options, which we believe are already substantively in place. In the case of smaller retail investors, there are mechanisms in place (for example the OM exemption available in every province except Ontario) to provide added disclosure and regulation as to the distribution of prospectus exempt securities.<br><br>We feel that a system based on suitability which is reviewed by a registrant and a compliance officer to be more effective then a system of firm rules based a clients financial situation.<br><br>We feel the current definition of accredited investor could be expanded to include educational background, work experience or investment experience. The current definition of an accredited investor is primarily focussed on financial resources and we feel it unnecessarily restricts many other market participants who are |

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| | | sophisticated enough to protect themselves.<br><br>We believe that the premise of the $150K MA exemption is unsound and therefore it should be removed. As for the AI exemption, we believe similarly that requiring assets with open classism is unfair and frankly misrepresents the purpose of investing. If this market is only to be left to a certain class of people whose money again does not indicate sufficient sophistication it is unrealistic.<br><br>We do not accept the premise that an investor's financial resources, educational background, work experience, or investment experience should form the basis of an assumption of eligibility, or demonstrate sufficient sophistication or level of understanding, to make any investment under any circumstance. We recommend a regime in which these factors form an integral part of the determination of *suitability* by an arms-length, third party registrant at the time of investment.<br><br>We do feel that the majority of the outlined factors should be a part of the overall AI exemption within reason. For instance the financial threshold alone should not be the sole reason behind an exemption for that particular client. Access to key financial information in regards to the issuer should certainly be a necessary component of the exemption, (such as audited financial statements, which aid tremendously in disclosing the true operations of an issuer as opposed to solely relying on marketing materials). Educational background and work experience should bear some weight, however we feel it is unfair to say that a person(s) with an educational background, as opposed to a person(s) that may have learnt investment skills from real life investment experience would be better qualified to make an educated investment decision. We feel that a mix of these factors in addition to a regulatory framework that would require the issuer to disclose financial information and documents (as evident in the current regulated Offering Memorandum based Exempt Market environment) supporting the business model would address adequate concerns surrounding the AI and MA exemptions.<br><br>Our organization feels that a minimum amount for an exemption is not a good measure of determining an ability of an investor to take a financial loss. Through the training our industry receives as Exempt Market Dealers tells us that a number of factors need to be considered to determine an individual's suitability for an investment. Age, savings, retirement, pensions, risk tolerance, education and knowledge of the business or a product. At the very least the minimum should not be increased. It is the obligation of the EMD to evaluate the client and determine if a client is suitable to invest in that certain investment. A simple dollar mark does not make someone accredited nor should it disqualify a person from investing.<br><br>MA and AI thresholds are really a proxy for sophistication, which is otherwise difficult to define (Although easy to know when you see it). We have found that the KYC rules and AI certification by the investor are effective for weeding out those who should not invest. In general, the MA rule only comes into play in one situation, which is where an entity (such as a Family Trust or corporation) does not itself qualify as an AI, despite being governed by a sophisticated investor or being part of a family which otherwise qualifies. In such situations, the MA exemption may be useful. Personally, I would prefer to abolish the MA exemption and broaden the AI definition to include entities where the investment decision is made by an AI or other qualified person.<br><br>We strongly support maintaining the current monetary thresholds for the AI exemption and support maintaining the $150,000 monetary threshold associated with the MA exemption. We submit that the current thresholds strike an appropriate balance between investor protection and fostering efficient capital markets. The importance of the AI exemption in particular should not be underestimated.<br><br>In the provinces that permit it, the OM exemption has made the exempt market, and accordingly comprehendible investment opportunities, available to millions of Canadian investors who would otherwise be unable to participate. Perhaps even more importantly, the OM exemption has resulted in billions of dollars being placed into |

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| | | entrepreneurial ideas, start ups, and small businesses which are at the heart of the Canadian economy. We feel that in certain cases (i.e. those with professional designations including CA, CMA, CFA, LLB, etc.) educational background is an appropriate basis for an exemption. As well, provided the individual in question works in an appropriate position in the financial sector, work experience may also be sufficient grounds for an exemption. We feel that investment experience may well be sufficient grounds for an exemption; however, we would need to further understand what would be deemed "sufficient" experience in order to answer in greater detail.<br><br>We do not believe that there is an appropriate basis for the MA or AI exemptions in their present form. They do not assess suitability in a useful or appropriate manner. The premise of judging investor sophistication by their assets or income level is unfounded and there is no proof of any correlation. The MA exemption is self-defeating in an attempt to protect an investor because it forces such a large exposure to a single investment. …Suitability should be determined as a function of all of the individual's appropriate variables – current financial situation, investment experience, risk tolerance, time horizon, goals, etc.<br><br>The financial tests currently set out for the AI exemption already restrict availability to a very small percentage of Canadian public. According to the Canada Revenue Agency's recent release of interim income statistics for the 2009 tax year, there were only 507,000 individuals with incomes in excess of $150,000, constituting only 2.1% of tax filers. Of these, only 173,000 individuals or 0.7% of tax filers had incomes in excess of $250,000. Hence, the $200,000 minimum income over a two year period with a similar expectation for the current year likely restricts accreditation to approximately 1.0% to 1.5% of tax filers. The minimum financial asset test of $1,000,000 also applies to very small number of Canadians. The 2011 Capgemini Merrill Lynch World Wealth Report estimated that there were 282,300 Canadian households with $1,000,000 or more of financial assets in 2010. This comprises approximately 2.3% of the 12.4 million households in Canada (as per the 2006 census). In our experience, the individuals that qualify under the Al financial tests are overwhelmingly sophisticated professionals, corporate executives and business owners who are capable of making thoughtful investment decisions. Most are experienced investors and many also have access to a network of professional advisors to assist them in their decision-making. Only a very small proportion would we consider inexperienced and, in these instances, the investor is typically sophisticated enough to be aware of his or her limitations and either restricts their investing to GIC's and the like or delegates his or her investment decision-making to a discretionary portfolio manager. The financial tests currently in place for the AI exemption limit exempt product access to a very small proportion of investors and in our opinion, act as good proxy for the level of sophistication and are highly correlated with other tests such as education, investment experience and the ability to take a loss. The MA exemption, although not as an effective indicator of "sophistication" as the financial tests of the AI exemption, does act in our opinion as a substantial barrier to investment by "non-sophisticated" retail investors. The dollar amount involved with a $150,000 threshold is material and thereby effectively excludes investment by most Canadians. According to Statistics Canada, the median net worth of Canadian households in 2005 was only $166,000 – approximately the same level as the exemption. In our experience, the MA exemption does allow access to exempt products by "sophisticated investors" who do not qualify as accredited investors. Frequently, they are younger and are in the process of building both their careers and portfolios. In fact, eliminating only the MA exemption, in some respects, discriminates against younger, "sophisticated" investors.<br><br>We note that personal wealth is no measure of sophistication when it comes to the securities markets, as many well-to-do Canadians have built up their assets through means other than participation in securities. As such, the financial thresholds prescribed in NI 45-106 serve more so as a measure of whether an investor has the depth of financial position to weather a loss should their investment in an exempt product not work out as planned. The financial thresholds in place at present are sufficiently restrictive from this point of view. To increase the benchmark amounts would be to restrict access to exempt market products to an unreasonable degree. Furthermore, increasing the financial thresholds (an adjustment for inflation, for example) will offer no new protection to investors, but it will serve to hamper the ability of the capital markets to operate efficiently at the smaller capitalization level.<br><br>Adults should be held responsible for their own investment decisions. The list of possible characteristics as a basis for these exemptions will be difficult to apply on a |

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| | | practical basis. Any criterion will be arbitrary and will likely exclude potential investors who should not be excluded.<br><br>We do not agree that educational background is a good measure, although investment experience is, and work experience, if generated in an investment firm, may very well be (perhaps the test should be whether the investor is a registrant). Without practical experience, however, the completion of a program of education does not, by itself, uniformly provide an investor with the appropriate level of sophistication or ability to withstand financial loss.<br><br>Unlike the MA exemption, the AI exemption incorporates asset and income thresholds and is a more nuanced mechanism with which to grant investors access to securities distributions in the absence of a prospectus. However, these standards are merely financial and may not ensure that investors are appropriately sophisticated to understand the risks of exempt investments.<br><br>The fundamental question is not one of minimum thresholds. The question is how do we protect or ensure that the proper level of due diligence is done with respect to investments of a substantial amount provided to an entrepreneur or third party business.<br><br>The current income and asset tests act as excellent indicators of "sophistication". Limiting the market based on work experience in the investment industry is tantamount to eliminating the exemption. Limiting the exemption based on industry qualification or advanced degrees in business is either unduly restrictive and/or no guarantee of "sophistication". |
| | **Does the involvement of a registrant address any concerns?** | We do not think so. Securitized products that posed problems were usually sold by registrants. Registrants often have no special technical insight or industry exposure. There is an inherent conflict of interest in how registrants sell products.<br><br>The involvement of a registrant in prospectus exempt products can reduce risks to the investor. Firms have a "gatekeeper" role which combines "know your client" and "know your products" expertise. The professional attributes of an advisor is the best protection for retail investors whether they are accredited or not.<br><br>We do not think registrants need to be involved in AI trades. AIs are able to make a decision about whether to seek advice or not. Requiring a registrant to be involved adds complexity and delay to the process, raises issues around compensation for the registrant and potentially creates conflicts of interest if funds for the investment are being removed from the registrant's management (for which registrant earns fees).<br><br>Involvement of a registrant is a strong positive as they are subject to know your client requirements but should not be mandatory.<br><br>The involvement of a registrant addresses some concerns, however, having a registrant plus a third party analyst report is more ideal. This is because a registrant serves client and isn't necessarily adept at investment analysis.<br><br>Where a registrant is involved in an exempt market offering, the focus for regulators should be on the proper enforcement of those existing duties and requirements which include suitability obligations.<br><br>Yes. Requiring that a registrant be involved in the transaction and that the registrant assess "know your client" (KYC), "know your product" and "suitability" with each investor in each prospective investment can, when honestly applied, address concerns. The registrant would be responsible to identify situations in which an investor is "qualified" but for whom a particular investment is not suitable. We must point out, however, that a potentially unintended consequence of NI 31-103 is the registration |

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| | | of "sole purpose" EMDs by issuers. These EMDs may have names that are different than the issuers whose product they exclusively represent, but these are in no way arms-length arbiters. Even with the assumption of good-faith dealing by these EMDs, the unavoidable conflict of interest, in our opinion, undermines the role of the EMD (i.e., as someone "looking out for the best interests of the client") and the objectives that NI 31-103 is designed to address.<br>We support re-examining the MA and AI prospectus exemptions; however, we also believe that any changes made to these particular exemptions will only address some of the issues with the current exempt market regime in Canada. In our view, a greater underlying concern relates to opportunities for regulatory arbitrage that currently exist throughout the exempt market regime. Registration requirements for transacting in the exempt market are not harmonized across Canada. In jurisdictions that currently require registration to deal in the exempt market, the current scope of activity permitted under the EMD registration category in NI 31-103 creates, to the detriment of the investing public, an un-level regulatory playing field between SRO Members and non-SRO Members that engage in the same activity. In our view, all transactions in exempt market securities should require the involvement of a registrant under securities legislation. We note that this would require reconsideration of the alternative approach to EMD regulation that has currently been adopted in certain jurisdictions. In addition, having regard to the concerns noted, we believe that EMDs should not have the ability to transact in prospectus-qualified securities.<br><br>The involvement of a registrant who is obligated to recommend only suitable investments does interpose an individual with an over-arching and regulatory responsibility to make only suitable recommendations, although we recognize that an investor is not obligated to adhere to the registrant's recommendations.<br><br>Having a registrant lead the distribution of the securities, while desirable, could add significantly to issuer costs. Requiring that a registrant fulfill the more limited role of judging the suitability of the investment for investors, however, would significantly strengthen the process at a modest additional cost to issuers.<br><br>I submit that the largest risk of fraud is from individuals and firms who are unregistered. Why would a fraudster go to all the trouble and expense of getting registered? So if the OSC were to adopt a rule that an issuer must have a suitability test done by a registrant, this would provide much stronger protection to investors who are being "served" by non-registered individuals.<br><br>This has the potential to significantly restrict small and mid-size companies from accessing this market. If a requirement was imposed on registrant firms that they must be involved in the distribution of all securities on the exempt market utilizing the MA or the AI exemption, they would very likely require significant compensation from the issuer in order to take on this task. The level of compensation may be too high for some issuers and would for all practical purposes cut-off this source of capital-raising for small to medium size issuers. We are also concerned that placing this requirement on registered firms which, due to their business focus may not be willing to raise capital in smaller amounts or for smaller issuers, would again effectively cut off this source of capital-raising by small to medium size businesses.<br><br>The registrant and the dealership is best positioned to determine the appropriate steps required to fulfill its KYC obligation given the circumstances of the contemplated trade and the particular client.<br><br>Yes, quite definitely. We believe that "Know Your Client" and resulting investor suitability determination made normally by qualified registrant advisors should be fundamental to any exempt market investment decision. Experience has shown that this can be a complex determination that is unique to each client. With the implementation of NI 31-103 and related instruments, at considerable effort and cost, exempt market dealers and issuers accept the responsibility and risk of ensuring client suitability including risk tolerance for any investment that may be recommended. Particularly in the last two years, the quality of KYP and KYC processes undertaken by most exempt market dealers has substantially improved and we believe now does the best job possible to protect investors. As such, the somewhat arbitrary restrictions imposed on investors by both the minimum amount and AI exemptions may not further serve investors. Our experience has shown that these |

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| | | restrictions are being viewed by some potential investors as arbitrary, draconian and "big brotherish". It is felt by some that these restrictions generally serve to disenfranchise rational, intelligent investors from benefiting from investments that would serve to increase diversification, potentially their ROI and, in some cases, avoid issues of market volatility.<br><br>Yes, having a dealing representative, represent only approved and researched exempt market products lowers the chances of an investor placing capital into "lower grade" investment products within the overall marketplace. Further to that having the representative only recommend suitable products for that specific client, may address concerns surrounding the education level of the investor making their own decisions without the aid of a knowledgeable representative.<br><br>A firm or an individual that is distributing their own product would be registered as an EMD and has an obligation to ensure that suitability is performed. The knowledge of the product or the investment will allow an EMD to appropriately determine what is appropriate. At the end of the day it is the education and the experience and knowledge of the EMD that should be the focus of our industry to ensure that the right measures are used to perform suitability. An EMD who is distributing product that they are intimately involved in the distribution enhances the knowledge that can be passed to a potential investor because they understand the product they are selling, where a third party EMD may not be able to provide the level of sophistication to communicate the product risks.<br><br>The involvement of a registrant who properly discharges its know-your-client and know-your-product duties and the suitability obligations prescribed in NI 31-103 and IIROC regulations will provide additional protection to purchasers in the exempt market. If there is a concern that dealers and individual representatives are not appropriately discharging these duties, then this is an appropriate matter for regulatory enforcement. While we are of the view that the current exemptions are sufficient to protect investors, we note that registrant involvement may provide additional protection. We do not, however, think it is appropriate to condition a prospectus exemption on registrant involvement.<br><br>We believe that the presence of an explicit fiduciary or similar obligation on advisors to act in the best interest of their clients would mitigate at least some concerns about the potential for abuse of these exemptions. It would also reduce the need for regulators to become involved in private placements to ensure that investors make informed investment decisions. If this duty were in place, the existing thresholds, with minor modifications, might be appropriate. In the absence of such a duty, however, we recommend that there by tougher restrictions on investor eligibility requirements.<br><br>The Exempt Market is not an unregulated market. Exempt Market funds in Canada are managed by regulated Portfolio Managers (Advising Representatives) who have both a know your client (KYC) obligation and a duty to ensure that the investment is suitable for each client. I am convinced that the only way to truly protect the investing public is to keep bad operators out of the industry via the registration system. It is the integrity of the investment manager and the advisor/ dealer that is paramount.<br><br>The registrant plays a vital role as gatekeeper to the capital market and ought to be forefront in the distribution of these investments.<br><br>This individual retail investor may be particularly vulnerable where they are not advised by a qualified, independent advisor that has an obligation to consider the suitability of the investment in respect of their specific circumstances.<br><br>We would maintain the MA exemption at its current dollar amount but couple its use with the requirement that either a registrant who has an obligation to recommend only suitable investments to the purchaser or a portfolio manager be involved when it is used in respect of a distribution to individual investors. |

| No. | Topic | Comment |
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| | | The involvement of a registered individual combined with the due diligence requirements of the EMD's help to provide a scenario where an investor may actually truly diversify their investment portfolio by allowing them access to well researched private companies that match their investment objectives. I will add however, that the bar on the education requirements needed to become an EMR could certainly be raised.<br><br>Though, we would prefer to see individuals seek advice on exempt products from registered PMs. It is wonderful that over the years the regulators have required an increasing amount of disclosure. We do feel strongly that the vast majority of individuals do not have the time or the wherewithal to understand a lot of disclosures and their context. And, by putting the responsibility on to the registered advisor, the regulator would then be able to hold someone responsible and accountable.<br><br>Based on our experience the involvement of a registrant would not assist the purchaser. The requirement to involve a registrant would be regarded as counter-productive. We do not believe that the requirement to introduce a stranger as advisor would add any benefit for these kinds of investors – the process of "knowing your client" and the level of "know your product" knowledge is unlikely to be regarded as assisting the investor in making his investment decision.<br><br>Many registrants, like most traditional financial advisors, are not advisors. They are sales people who work for a commission. By its nature they are biased to sell as much as possible for the highest total commission. They gravitate to high commissions as the initial focus. This gravely skews the investment landscape immediately negative for the investor in that low commission products do not get sold, or with low priority only.<br><br>An exempt markets course: Upon review of recent OSC rulings and orders, we have concluded that the exempt market actor best able to evaluate the suitability of an exempt market product for individual investors is in many cases an exempt market registrant, including a financial advisor who has taken a recognized exempt markets course. While exempt market dealers and chief compliance officers are required to complete the Canadian Securities Course Exam and the Exempt Market Products Exam, we submit — given the growing complexity of exempt market products — that *all* exempt market registrants be required to complete an exempt markets course, to ensure a basic standard of proficiency is met by key parties to an exempt market transaction. This requirement would enhance the value of advice available to prospective individual exempt market investors. In terms of proficiency requirements, an exempt market dealer's dealing representative must pass the Canadian Securities Course Exam, the Exempt Market Products Exam, or satisfy the proficiency requirements of an advising representative of a portfolio manager. An exempt market dealer's chief compliance officer must pass the PDO Exam (the Officers', Partners' and Directors' Exam or the Partners, Directors and Senior Officers Course Exam) and either the Canadian Securities Course or the Exempt Market Products Exam, or satisfy the proficiency requirements of a chief compliance officer of a portfolio manager.<br><br>I would also respectfully suggest that although at times an IIROC dealer may be involved by way of providing the funds or receiving the shares, to try to thrust the burden of advising the client when the member is not involved as a party to the transaction or privy to the transaction in advance does not serve the investing public. IIROC members can only truly protect the investor if they have a say in the form of the subscription agreement, a say in the proposed settlement process and the chance to demand information around the distribution in advance.<br><br>NI 31-103 should be amended: There should be more disclosure about past sales history for SALES PEOPLE or EMD owners who now control access to capital for issuers. It appears that a sales person who has sold non-performing investments for many years can continue to do so.<br><br>A major related problem is the number of individuals who are acting as EMD's but are not registered to do so. At the consultation session, OSC staff confirmed that the |

| No. | Topic | Comment |
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| | | largest proportion of fraud or situations where investors have invested in securities inappropriate for them, involves issues where no registrant was involved. I believe that this problem has grown under the new rules, due to the massive increase in costs brought on by these rules (500% for [the commenter]) and the hundreds of hours of course time required, all of which provides a disincentive for people and firms to register. The problem is likely larger in those provinces that didn't require registration previously, but nonetheless is a significant problem in Ontario as well. Unfortunately, any tightening of the AI rules, introduction of requirements for some minimum disclosure, etc. will further decrease the likelihood that these people will register.<br><br>We understand that a number of registrants do not adhere to current suitability requirements – we recommend better oversight of registrants' compliance with suitability, know your client and know your product requirements and stronger sanctions for non-compliance.<br><br>Current suitability requirements are inadequate in cases of conflicts of interest. A fiduciary duty might be more appropriate.<br><br>Requiring a industry standardized test for investment knowledge and experience; the test results would be reviewed by Compliance and minimum professional qualifications for those selling securities that are covered by the exemption.<br><br>We would submit that the costs and benefits of having a registrant involved in every investment utilizing the Exemptions should be considered. We are not aware of the exact statistics on the use of the Exemptions in non-brokered situations but would anticipate that it would not be insignificant and thus the involvement of a registrant in all distributions would increase the transaction costs to the issuers. Further, if the Exemptions are premised on the basis of the investor being able to "fend" for himself or herself given his or her level of apparent sophistication, then the involvement of a registrant should arguably not be required. |
| | **Does having a registered portfolio manager make a difference?** | Distinguish between products in which the investor has the benefit of professional management (i.e. pooled funds) and those products which do not include professional management (e.g. equity in a single company); the former offer greater investor protection. The diversification provided by an investment fund should allow for reduced regulatory concern and therefore a lower threshold for investors under the exemptions.<br><br>Entrusting others to manage your money is riskier than doing it yourself if the manager does not have the same risk of loss and if there are conflicts of interest (i.e. in how fees are paid to manager).<br><br>An investor who has the benefit of a registered professional portfolio manager, making the investment decision on behalf of the investor, ought to have available to him or her an exemption that would allow the investor full access to financial products deemed by the portfolio manager to be suitable for the investor. The managed account category of the AI exemption recognizes this. An investment fund can offer the client diversification, greater access to certain financial products and brokerage cost and other savings from economies of scale that a direct investment will not. The Ontario carve-out for investment funds acquired by a fully managed account is an arbitrary distinction that fetters a portfolio manager's ability to discharge its statutory duty to act in the best interests of non-accredited managed account clients where those interests are best served by investment in a pooled product (without having to invest a minimum of $150,000 – or more - in that product). The exclusion of investment fund securities from the managed account category in Ontario is particularly perplexing when one considers that there are multiple levels of regulatory oversight in place to protect an investor purchasing a security of an investment fund. There is an initial level of investor protection in the form of the portfolio manager's KYC and suitability assessment. Once the investor's assets are invested in an investment fund, there are additional levels of protection in that both the investment fund manager and the fund's portfolio manager are subject to regulatory oversight aimed at ensuring that clients (the fund and its investors) are treated honestly and fairly.<br><br>Being able to manage investors' money through a pooled fund offers substantial administrative and trading advantages compared with offering the same investments |

| No. | Topic | Comment |
|---|---|---|
| | | through individual accounts, with no investor protection disadvantage. In addition, pooled funds managed by licensed portfolio managers that invest solely in publicly traded securities should be viewed differently than other pooled funds that do not share these characteristics. As a result, accredited investor rules should be eliminated on this class of funds, rather than being raised. |
| | **Does the type of security matter? e.g. a novel or complex security** | Difficult to set criteria for complexity as products are continually evolving; products that were once viewed as complex are now mainstream. It would not be reasonable to define complex products.<br><br>Risk is higher to investors when the security is complex. The CSA should issue a separate consultation on the appropriate regulatory model for the sale of complex products, including whether the AI and MA exemptions are appropriate for such products. New regulatory approaches for complex products are needed.<br><br>Our view is that lack of sophistication is more of a problem in the sale of investment funds, complex products, high-yield loans and possibly franchises.<br><br>We are of the opinion that the income thresholds should be increased regardless of the complexity of the investment or risk disclosure provided to the investor. As previously mentioned, it is our opinion that a prospectus exempt financing conducted through an IIROC Member Firm should qualify as a stand-alone prospectus exemption.<br><br>Disclosure standard should be higher and more rigorous for sellers of novel or complex products.<br><br>It is not only the investment product/security but also the nature of the trading strategy that could impact a retail investor. For example, we note that the OSC/CSA has found it necessary to issue Investor ALERTS regarding inappropriate investment leveraging.<br><br>Securities regulation should have general application and should not be security specific.<br><br>We do not believe that the CSA should impose any investment limitations based on the novelty or complexity of a security on individual investors. By way of illustration, in April 2011, the CSA published for comment Proposed National Instrument 41-103 *Supplementary Prospectus Disclosure Requirements for Securitized Products* that, among other things, introduced a new Securitized Product Exemption which would limit the distribution of securitized products to a new class of investors, specifically an "eligible securitized product investor". We do not believe that the CSA should exclude investors from participating in the exempt market based on whether they would be an 'eligible investor' for a certain product. Furthermore, introducing a product-centred exemption may deter investment and overstate the level risk and complexity with certain types of products currently available in Canada, such as securitized products.<br><br>The only way we see this as be a viable qualification is if NI 45-106 were revised to include an exhaustive list of the type of security that was considered novel or complex. A subjective "complexity test" would create nothing but uncertainty among issuers, advisors and subscribers. |
| | **Is the type of issuer relevant?**<br>**For example a reporting issuer vs. non reporting issuer?** | Reporting issuers should be held to a higher standard – disclosure standard for reporting issuers should be higher and enforcement more rigorous (because AIs and the public think the reporting process confers some protection).<br><br>More problems occur with non reporting issuers so further checks and balances may be appropriate.<br><br>We believe you have to separate exempt market offerings into two categories and deal with them separately: brokered offerings and non-brokered offerings. For |

| No. | Topic | Comment |
|---|---|---|
| | | brokered offerings, the AI exemption should be expanded with an additional qualification where the investor does not have more than X% of their liquid net worth invested in the exempt market. This category should be used if it is coupled with a suitability determination. For non-brokered offerings, we suggest the current AI exemption is valid.<br><br>If there is a decision made by the commissions to make access to exempt market products more difficult than is the case under prevailing regulations, we believe it prudent that consideration be given to applying a different set of standards to equity issues conducted by companies listed on Canadian stock exchanges. Applying a simple set of standards based on a "percentage of household net worth" calculation or a "percentage of household annual taxable income" calculation (with annual taxable income having to exceed $100,000, for instance) would provide a reasonable degree of financial protection to investors participating in an equity issue. |
| | **Should any disclosure be provided to investors?** | All minimum amount investors would benefit from a required statement by the issuer that the investment is considered an alternative investment because it is long-term, illiquid and high risk and that most people should invest no more than 5 to 10% of net worth.<br><br>Risk factor disclosure would be useful.<br><br>I do not think the investor needs risk disclosure (in the context of the AI exemption).<br><br>Require the provision of an independent analyst report in conjunction with the current AI and MA exemptions.<br><br>More disclosure by issuers and about sales people should be required, not higher minimums or higher incomes.<br><br>It is our opinion that whenever the AI exemption is utilized, the investor would be required to complete a minimum standard disclosure subscription agreement (i.e. acknowledgement that the investor has waived their right for recourse if they knowingly provided inaccurate information in the subscription agreement, investment threshold acknowledgement, exemption criteria, etc.).<br><br>IFIC Members support improved disclosure with respect to investment funds and competing securities products, and believe that investors should receive clear disclosure that provides them with appropriate and relevant information. Such information empowers investors to make informed choices about the various securities that may be recommended to them for purchase.<br><br>As a general rule we have found prospectus disclosure alone, especially of complex products such as mutual funds, SPAC's ( "blank cheque" investment's), hedge funds, leveraged /reverse ETF's and non-bank ABCP to have minimal protective value for retail investors.<br><br>While we understand the topic of this consultation are the MA and AI exemptions, securities related discussions are ultimately about disclosure and suitability. Given that, we must ask what protections do prospectuses provide that the OM exemption does not? Like OMs, prospectus offerings provide no mechanism to ensure investors will not lose some or all of their money. Therefore, why are they presumed "safer" than those products offered by an OM? It is only in theory, and not in practice, that the inordinate amount of disclosure provided by a prospectus benefits investors. Prospectuses and the financial statements relating to public companies may be well understood by both regulators and the legal community but they are effectively too complicated and too lengthy for average investors to understand. Given the overwhelming amount and complexity of information contained within a prospectus, investors often choose to "sign here" and forego reading the disclosure materials provided. We feel that this "over disclosure" is in many cases paramount to no disclosure at all. We feel that the amount of disclosure being provided to investors needs |

| No. | Topic | Comment |
|---|---|---|
| | | to be completely re-analyzed with a sufficient amount of disclosure being provided to all investors as opposed to copious amounts of impenetrable disclosure being provided to "unsophisticated" investors and none being offered to those that are "sophisticated".<br><br>In addition, there should be a requirement for basic disclosure of the nature of the investment, the market need that is being addressed, the use of funds, the risks, the competition, etc. The CSA should prescribe the items to be disclosed but not the form of disclosure. The issuer may already have all of these items covered in a Business Plan and should not then have to re-write it to fit into some regulatory disclosure format. If a stand-alone document, this should take no more than five pages, although most issuers will aim for a document that is more comprehensive. But if the requirement is too broad, the line and cost differential between prospectus disclosure and exempt disclosure will become blurred.<br><br>Create a short form standard document that outlines the "offering" in plain English with minimum requirements such as, but not limited to, risks and liquidity restraints that must be distributed as part of the evaluation process.<br><br>We feel very strongly that issuers accessing exempt markets need to have better disclosure of financial matters continuously and not just at the time of offering and that management of issuers need to provide more transparency and communication to investors during the investment time horizon.<br><br>Save for the OM exemption, the very basis of prospectus-exempt investments is that eligibility is not based on or created by disclosure. We suggest that implementing risk factor disclosure would present a fundamental conceptual change to these exemptions. The possibility of adding a disclosure element raises the question – what level of disclosure would be required? If it is close to OM-level, why maintain an exemption separate from the OM exemption? If it is less than OM-level disclosure, will it offer any added protection to the subscriber or just create reliance on less than complete information and lead to more misrepresentation claims by investors.<br><br>Make it mandatory that issuers/dealers in exempt markets have their offerings go through an approved third party due diligence process producing a research report with a rating. It should be mandatory that dealers provide the research report to their clients.<br><br>[The commenter] recommends that the CSA mandate a brief and easy-to-understand disclosure form for all exempt investments. This form could describe the eligibility requirements for an accredited investor, his or her most significant statutory rights with respect to the purchase, as well as the unique risks involved in an exempt market investment. The form, however, should be concise—not exceeding two pages—and written in plain language. This will not only promote consistency across the exempt market, it will also serve to:<br>• encourage investors to read, and better enable them to understand, the information being disclosed;<br>• help investors, who mistakenly believed—or were persuaded to believe—that they meet the eligibility criteria, to understand that they are ineligible to participate in an exempt market investment; and<br>• inform investors about their right to rescind their agreement to participate in a prospective exempt investment, despite meeting the qualification thresholds.<br>•<br>Risk Acknowledgement Statement – Investments that utilize the MA or AI Exemption should be accompanied by a simple acknowledgement statement requiring the investor acknowledge that they understand and accept the risk of the investment. We would also recommend that the OM exemption, as is currently available in BC, should be maintained.<br><br>Risk acknowledgement form: Prior to the purchase of a product pursuant to our proposed additional MA and AI exemptions, the individual investor must sign a risk |

| No. | Topic | Comment |
|---|---|---|
| | | acknowledgement form. The use of a risk factor disclosure document required to be signed by the investor will provide regulators with further assurance that the investor has read and understood the risks. This document would provide the dealer with a degree of protection in regard to allegations of misconduct. Such a form is already used as the basis for exemptions by the British Columbia Securities Commission.. The exempt registrant would then report the purchase to the regulator as an exempt market transaction and provide the dealer (and the issuer, where appropriate) with a copy. It would need to be delivered to the securities regulatory authority within 10 days after the distribution.<br><br>Including a Risk Acknowledgement Requirement. Certain provinces, such as Saskatchewan, permit investors to participate in certain exempt distributions (e.g. under the Family, Friends and Business Associates exemption) if they sign a "Risk Acknowledgement Form" in which they acknowledge the risks of a prospective investment. In other jurisdictions, such as British Columbia and the Maritime provinces, this option is available to investors under the OM exemption.<br><br>A form 45-106F4 that has been present in all exempt market investment documentation I use is very clear. I have never had an investor try to cruise by that form without stopping to read it when completing a subscription agreement. It always gets an investor's attention, as it should. The same or similar form in all private investment subscriptions can ensure that investors realize the importance of disclosure and accessing helpful resources in making their choices. A form where the investor waives their right to use of an intermediary such as a registered, independent exempt market dealership might be appropriate. Another form that lists the categories of disclosure could be acknowledged by an investor, too. |
| **Minimum Amount Exemption** | | |
| | **Is a prospectus exemption based on a minimum investment amount appropriate?** | Having a minimum amount to invest does not provide any assurance of sophistication on the part of the investor.<br><br>At most, the size of the investment is an indicator only of the investor's ability to withstand financial loss.<br><br>This exemption is susceptible to being used inappropriately by individual investors and parties seeking to raise capital since it simply requires a person to raise the amount, by unspecified means.<br><br>The MA exemption is impossible to rationalize at any amount and should be abolished rather than reset.<br><br>The MA exemption implies *de facto* suitability (whether or not correct from a legal perspective, many advisors begin with an assumption of suitability when an investor is willing to invest $150,000 in a single security). There are numerious situations where the KYC and suitability assessment process is greatly reduced for orders in excess of $150,000 based in some way on this argument.<br><br>One of the rationales behind the exemption is that, given the level of investment required from the investor, he or she would have the ability to negotiate terms and obtain additional information or protections with respect to the investment – i.e. he or she has negotiating leverage given the level of investment. Based on that rationale, the amount of $150,000 may be insufficient.<br><br>The MA exemption is premised on an investor having one or more of: a certain level of sophistication, the ability to withstand financial loss, the financial resources to obtain expert advice, and the incentive to carefully evaluate the investment given its size. The monetary threshold of $150K continues to ensure these underlying premises are met. The erosion to the base amount over time has not changed this fact. The $150K amount continues to offer appropriate protection. |

| No. | Topic | Comment |
|---|---|---|
| | | This exemption creates the unintended consequence of investors investing $150,000 in a single investment when a much lower amount would have been more appropriate. In other words, the MA exemption engenders the very behaviour (i.e., portfolio concentration in private, illiquid securities) that these rules are designed to prevent.<br><br>The minimum amount rules can actually increase an investor's risk. By imposing a $150,000 minimum investment, the current rules can force investors to make larger investments than they would otherwise feel comfortable making, as it is the only way to access this attractive market. These investors would be better served if they could make smaller investments in a single issuer, thereby diversifying their portfolio.<br><br>Great harm has been inflicted on retail investors by the MA exemption. If one of the mandates of the CSA is to reduce risk to retail investors the number one place to start is by eliminating that requirement that investors who neither meet the income nor asset thresholds be forced to invest a significant amount of $150,000 or more, most likely borrowed against the equity in their homes. Rather than a minimum amount, common sense dictates that certain retail investors should be limited to a maximum amount which they could place in one investment, somewhere in the $10,000 to $25,000 range. By changing the minimum of $150,000 to a maximum of $10,000 to $25,000 the CSA would most likely eliminate the complaints of retail investors losing their homes or life savings.<br><br>Individuals entering or in retirement may be particularly vulnerable if they have accumulated significant amounts of capital but rely on these funds, and the income that these funds generate, to sustain them in retirement. These investors may need extra protection as they may have an illusion of financial sophistication (afforded in part by the MA exemption itself) but lack sufficient expertise to make informed investment decisions about exempt market products. Such investors are also more likely to be targeted by investment advisors soliciting investments in unregulated opportunities such as those available under certain exemptions.<br><br>Minimum investment amounts may also foster a perception of unfair advantage being given to a certain group of investors.<br><br>[Our] view is that the MA exemption does not assure investor sophistication and may not be in the best interest of the individual investor. In the case of institutional investors, their total assets are typically much larger and would therefore have the ability to withstand financial losses. Further, institutional investors are generally more sophisticated and have access to in house professionals and/or consultants who are sophisticated and experienced in investing. An alternative qualification criteria for individual investors should be that they have the relevant sophistication and investment experience.<br><br>One of the outcomes of the MA exemption is that $150,000 is an arbitrary number that does not consider the risk of the investment, especially when "it may have made more sense to invest only $50,000". The CSA should consider an alternative exemption to the minimum exemption, rather than indexing or increasing this exemption. |
| | **Should the MA exemption be retained in its current form? How much should the minimum investment threshold be increased or** | The exemption should be retained in its current form. The exemption currently represents a sufficient amount of money and as such would appear to preclude the majority of the public from using it, especially when one considers the median incomes and wealth of Canadian households. Further, if an individual is disposed to invest such a substantial sum of money in an exempt-market investment, the onus should be on the individual to protect himself or herself.<br><br>The threshold amount should be lowered by 50%. Anyone who invests $75,000, whether in a consumer purchase or an investment should be expected to do some research. The investor has to do his or/her own research and should not rely only on advisors. Investors need to be enabled to make their own decisions, based on better disclosure by issuers and sales people.<br><br>The threshold amount should be dropped to $20,000 when the exempt market product is distributed through a financial advisor who is registered with an exempt market |

| No. | Topic | Comment |
|---|---|---|
| | **decreased?** | dealer and the product is managed by a registered portfolio manager and comes with an Offering Memorandum.<br><br>We recommend retaining it or reducing it. Consider reducing it to $25,000, coupled with disclosure requirements and limits.<br><br>The MA exemption should be retained, but be modified to a lower minimum investment threshold of $50,000.<br><br>As an alternative to repealing the MA exemption, lower the amount below $150,000 or allow it to be spread over several investments.<br><br>The amount invested could be capped at a percentage of an investor's net worth or income (i.e. 10%)<br><br>If the MA exemption is retained but modified, where a Portfolio Manager is involved with the purchase, the threshold value should be based on the lesser of:<br>(a) a lowered threshold minimum amount of $25,000; or<br>(b) a specified percentage of the investor's portfolio size (i.e. 5%).<br>The investor should also be provided with a risk acknowledgement form.<br><br>There are significant problems with the use of the MA exemption that would justify its elimination or a significant increase in the $150,000 monetary threshold.<br><br>There appears to be a good argument to increase the minimum in relation to what the current value of the 1987 $150,000 is in today's dollars to $250,000. As an alternative, perhaps a two tiered system should be contemplated, for example a minimum investment amount of $150,000 for individuals and $250,000 for institutions.<br><br>The MA exemption should be abolished or at least made scalable and reflective of the investor's sophistication, resources and risk tolerance. The somewhat arbitrary "one size fits all" model may be highly prejudicial to the interests of some investors who are growing their holdings or have diversified in ways not recognized by present regulations. While scalability based on income, sophistication and/or net worth would introduce a further layer of subjectivity to the suitability process, with guidance, exempt market dealers are capable of managing such a system.<br><br>The MA exemption should be removed. The ability of an investor to raise $150,000, without reference to their income, assets or actual ability to sustain such a significant loss presents significant potential investor protection issues. The MA exemption, designed to demonstrate an ability to withstand loss, may in some cases result in investors actually taking on more risk than is advisable in order to be eligible to use the exemption.<br><br>This exemption should be retained until there is clear evidence that dealers are using this exemption in an abusive manner.<br><br>Raising the dollar limit to at least $250,000, adjusted annually for inflation, would help prevent a large number of investor complaints. This amount should not represent more than 10 % of an investor's net worth. |
| | **Should the threshold for the MA exemption be adjusted for** | No, however the MA exemption should be periodically reviewed to ensure the underlying assumptions are still correct (ie that the amount invested is still significant enough to conclude the purchaser is sophisticated).<br><br>Inflation mostly tracks households' costs of living and has little impact on financial assets. A better choice might be the national rate of increases in household financial |

| No. | Topic | Comment |
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| | **inflation?** | assets or the national rate of net increase in household income or some ratio of financial assets to average household financial assets.<br><br>It is not apparent that indexing the threshold to inflation serves any purpose other than to regularly and consistently increase the threshold. This may do no more than continually erode the pool of potential investors who qualify for the exemption, which reduces the value of the exemption to issuers.<br><br>It is not clear how inflation, which is primarily a consumption related measurement (it erodes purchasing power and asset values), should have any application to the threshold amount. The impact of adjusting thresholds by inflation (no matter which inflation measurement is used) would be to impose a double reduction in the number of qualifying investors; inflation would erode the capital they have available to invest and the increase in thresholds would further remove them from the marketplace. …Since salaries have not increased significantly in recent years, and wealth creation opportunities have been limited, it would be artificial and detrimental to raise the threshold by this metric. We very much doubt that the threshold would be decreased by a deflationary trend.<br><br>There should not be any adjustment for inflation. If it is determined that the exemption should be retained then it is better to maintain the current minimum amount for consistency rather than pick another arbitrary number that fails to provide the right measure of protection for investors.<br><br>The MA exemption should be adjusted for inflation. Alternatively, provide for a periodic (every 5 year) increase to reflect inflation or economic growth over that period.<br><br>The MA exemption has been premised to a certain extent on an investor's ability to withstand financial loss. At a minimum, the current threshold of $150,000 should be adjusted for inflation. As the consultation document notes, the $150,000 threshold set in 1987 is equivalent to over $265,000 in 2011 dollars.<br><br>Yes, the MA threshold should be adjusted periodically for inflation. However, we believe there is some advantage to having a stable, well-known, "round number" for the threshold. Accordingly, we do not believe that it is necessary to adjust the threshold annually. Instead, we would suggest adjusting the threshold upwards or downwards to reflect inflation (or deflation), whenever changes in the consumer price index would justify a larger incremental change, such as a change of $2,500. |
| | **Should the MA exemption be repealed?** | **No, the exemption should not be repealed**<br>A number of commenters did not support repealing the MA exemption. Some of the reasons given included the following:<br>• We see it being used on a regular basis and it is considered by our issuer and investor clients to be a useful prospectus exemption.<br>• Why would we unnecessarily deny Canadian issuers access to capital. If the underlying assumptions to the MA Exemption remain true, why wouldn't we provide Canadian issuers with as many alternatives as possible to raise capital and create value for their shareholders.<br>• The objective should not be to unduly restrict capital raising but rather, improve its functioning by promoting risk awareness through investor education and self-evaluation.<br>• If the proposed changes are implemented, fewer investors will be qualified to provide capital to businesses which need it. We urge that the CSA not increase the costs to small and medium size businesses by making it more difficult to access required capital. For this reason, the existing exemptions ought not be repealed or increased in the absence of pressing need for public protection.<br>• This exemption should not be repealed unless other changes are made to current or new exemptions to accommodate capital raising by SMEs.<br>• The MA exemption should not be eliminated as there are certain situations where this exemption is of use.<br>• It provides a means for sophisticated investors who are not accredited investors to participate in the exempt market. Concerns with this exemption are best dealt with through disclosure and registrant involvement. |

| No. | Topic | Comment |
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| | | **<u>Yes, the exemption should be repealed</u>**<br>A number of commenters supported repealing the MA exemption. Some of the reasons given included the following:<br>• Transaction size alone does not imply any level of sophistication on the part of the investor, nor any suitability as to the appropriateness of the transaction.<br>• An arbitrary number of any amount is a poor gauge of suitability. It should be the individuals responsibility and choice to investment the appropriate amount for them based on their financial situation.<br>• We feel strongly that the MA exemption, regardless of amount, is in conflict with prudent investing principles such as diversification and suitability.<br>• No amount of money invested should imply a level of investor sophistication to which no disclosure from an issuer is required. An exemption based solely on this criteria creates no real basis of protection for an investor no matter what their level of investment is.<br>• The establishment in 1987 of the limit of a minimum investment of $150,000 was arbitrary, as a proxy for sophistication, but does not actually provide any assurance of sophistication on the part of the investor. In the context of investment in pooled vehicles the minimum investment forces an investor to concentrate their investment in one strategy, thereby increasing risk, when the ability to diversify an investment of this size across several strategies would better serve the investor by reducing risk.<br>• The MA exemption may encourage an investor to invest an amount in a prospectus-exempt security that is not in line with their investment objectives and could cause them to take on more risk than they would otherwise wish.<br>• The MA exemption is impossible to rationalize at any amount and should be abolished rather than reset.<br>• A dollar investment alone, even one higher than the present threshold, is not a proxy for financial sophistication.<br>• We feel that in a majority of cases where non accredited investors are relying on this exemption, a bulk of subscription funds come from a home equity line of credit. Individuals should not be putting their homes at risk simply because that is the only way they can get enough money together to meet an exemption (and get into a given investment) for which they otherwise would not qualify.<br>• It does not serve any particular purpose except to magnify the impact of mistakes made by individuals.<br>• A minimum purchase amount does not have any relevance on an investors' sophistication.<br>• It would be preferable to repeal the exemption. An OM exemption or requiring the involvement of, a registrant are better approaches.<br><br>The MA should be eliminated in the face of the substantially increased responsibilities for investor protection undertaken by exempt market registrants. As part of their KYP/KYC processes, exempt market dealers consider the degree of issuer disclosure, whether the investor is an individual or institution, the complexity of the security and whether or not the issuer is a reporting issuer. All of these factors contribute to the ultimate suitability decision. In jurisdictions where the MA exemption is the only exemption available to allow non-accredited investors to participate in the exempt market, that repeal of the exemption would potentially reduce capital raising ability unless the exemption were replaced with something that continued to allow non-accredited investors to qualify. The AI exemption, because of its strict definition that relies on financial assets, would still serve to disqualify many investors who may otherwise be suitable for certain exempt market securities.<br><br>Yes the MA exemption should be repealed. In all cases, exempt distributions should provide full risk disclosure to prospective purchasers. At a minimum, registrants have an obligation to recommend only suitable investments and would prefer to see all registrants held to a fiduciary standard. We do not believe that individuals should be shut out from the exempt distributions market, nor that securities of reporting issuers, when issued as exempt distributions, should be treated any differently than securities of non-reporting issuers. |
| | **Should individuals** | We have nothing against well meaning individuals nor want to make their lives any more difficult but the sad reality is that the securities evaluation is simply a very |

| No. | Topic | Comment |
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| | **be able to acquire securities under the MA exemption?** | complex issue and most, almost 99% of the individuals we come across have neither the education nor the time to evaluate such securities. We therefore advocate that individuals be severely restricted from participating in the exempt market unless there is a bona fide gate keeper. They should have either a managed account with a PM who is then accountable for decisions.<br><br>Individual investors are less likely to possess the skills necessary to do their own due diligence. This would be solved by requiring an independent analyst report.<br><br>Limiting it to institutions would have a negative impact on capital raising – angel investment in Canada would end.<br><br>Individuals in Canada, regardless of their financial sophistication, can easily and quickly open up a discount brokerage account on their own and buy options, derivatives, foreign exchange contracts, use leverage (margin) etc. I believe that they would be better off having access to professional managers, even if those managers offer their products by way of the exempt market. People that have the freedom to do dumb things on their own should have the freedom to choose to hire a professional to help them.<br><br>Limiting the use of the MA exemption by individuals would be a regressive step and tend to impose a financial penalty on an individual wishing to use the exemption, namely the cost and trouble of forming and capitalizing an investment entity that would itself be entitled to use the MA exemption. Individuals should continue to be entitled to acquire investments under the MA exemption, provided that at least financial and other basic issuer information is furnished to the investor.<br><br>Individuals should have the same criteria as do institutions as we would expect a person to be more diligent with their own finances than an institution.<br><br>If individuals are allowed they should not be allowed to put more than a certain percentage of their assets into any one security. This would lessen the impact of having made a wrong decision.<br><br>The MA exemption should be repealed in regards to individuals regardless of any potential impact on capital raising, which we feel would be minimal as most who rely on it are likely also accredited investors. Protecting those who are not accredited investors (but have access to $150,000 through an inheritance, home equity line of credit, etc.) would be suitable exchange for the minute decrease of capital accessibility. The goal of investor protection must be as important a consideration as the ease of capital access for issuers.<br><br>In our view the MA exemption is not an appropriate basis for trades of exempt securities by individuals. In practice we do not generally see a strong enough logical connection between the size of the investment made and the rationale for the investment being made on an exempt basis. We do not generally see a connection between financial sophistication, financial knowledge or ability to withstand loss and the amount of an investment.<br><br>A fixed exposure limit, perhaps based on a specific percentage of the investor's investable assets, might be a useful addition. This would serve to restrict the individual's investment under the MA exemption to no more than that limit amount. |
| | **Are there** | Provisions should be put in place to ensure that investors are not leveraging their primary residence in order to meet this exemption's criteria. |

| No. | Topic | Comment |
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| | **alternative qualification criteria, other limitations or other issues with the MA exemption?** | Should a non-accredited investor wish to participate in an exempt offering they should have a maximum amount they can do (for example $10,000 as permitted under the OM exemption) not a minimum amount. We believe that the maximum should be raised to a reasonable number (not much more than 10K, say 15K – 20K) and the minimum should be eliminated.<br><br>Require disclosure on the fact that the investment is considered an alternative investment because it is long-term, illiquid and high risk.<br><br>The MA exemption should be based on several factors and not just on fixed financial resources. Investment experience should also be a factor.<br><br>Many jurisdictions in Canada permit exempt distributions under the Family, Friends and Business Associates exemption or the OM exemption which include the provision of a risk acknowledgment form. The adoption of a risk acknowledgement form requirement is a credible alternative to eliminating the MA exemption altogether, but we question whether a signed risk acknowledgement provides investors with sufficient protection. Members of the public often sign risk waivers without fully understanding them.<br><br>The intent behind and requirements of the MA exemption are not problematic. Some investors will sell liquid assets to obtain cash in order to use this exemption. It may be beneficial to the investor to be able to invest the minimum amount in smaller increments rather than in one lump sum. Give investors the option of investing the minimum amount in one or more tranches over an aggregate period of not more than 180 days, with each tranche being on the same terms and with respect to the same securities. In addition, the subscription agreement in respect of the aggregate investment should require that if the investor does not invest the full amount required to qualify for this exemption, the issuer will promptly return the full amount of the investment to the investor, without interest or penalty. The main concern with permitting investment over several tranches is that the issuer would be unable to access the funds until after the last tranche, which would create access to capital concerns for the small issuers.<br><br>It may be appropriate to limit the number of times that this exemption may be used by a single investor, especially as this exemption is intended to be used in a situation where the investor does not qualify as an accredited investor.<br><br>A “financial means” test would be a more appropriate basis for exemptions than a minimum amount. However, relying on dealers or issuers to conduct such a test is implausible for many reasons, including possible conflicts of interest. Such a test could possibly be administered by requiring a registered financial advisor to conduct the test on his or her clients, as an extension of existing KYC requirements.<br><br>Any investor, regardless of their level of wealth or income, can purchase securities of an exempt distribution provided that the purchase represents only a small portion (up to 10%) of their net assets (excluding primary residence) unless a risk acknowledgement is executed by the investor and the registered advisor acknowledging the level of investment and the implications and risks were fully considered. We believe that all securities should be issued with sufficient disclosure of risk factors to allow the buyer to make an informed decision. Where a registrant is involved in selling these securities, we believe that the registrant has a fiduciary obligation to act in the best interests of his client, the purchase of those securities. Finally, in exploring this issue, we have concluded that the risks of getting poor advice or self-serving advice are at least as significant as any risk inherent in any security, whether prospectus-qualified or an exempt distribution. As important as the “protections” afforded to investors by having prospectuses approved by regulators are, if the investors don’t read the prospectuses and rely solely upon an advisor’s recommendation, the regulation of the standard of advice is as important as the prospectus, if not more so. |

| No. | Topic | Comment |
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| | | It is important to point out one way in which the MA exemption is "gamed". It is not uncommon for issuers to sell securities to an investor based on the MA exemption, only later to redeem a portion of that investment so as to "top up" a future investment from the same purchaser that would otherwise be less than $150,000 (for example, an investor invests $150,000 in January, and has another $50,000 to invest in June so the issuer redeems $100,000 in May, which, along with the "new" $50,000, adds up to a new $150,000 investment in June.) While this may not violate the letter of the law as it pertains to the MA exemption (assuming that both investments were in fact determined to be suitable), but it clearly violates the spirit of the exemption, and the example supports the elimination of the MA exemption.<br><br>There should not be any further limitations added to the MA exemption. The previous Ontario-only rule, eliminated in 2001, did not require, as the new rule does, that the $150,000 be in the form of cash. Any further limitations on this rule would be detrimental to the ability of exempt market issuers to access capital and investors' ability to access to a wider range of investment products.<br><br>With respect to the MA exemption, we note that the $150,000 threshold appears elsewhere in NI 45-106; for example, under the asset acquisition exemption in section 2.12 and the exemption for top-up investments for investment funds in section 2.19. If it makes sense to do away with exemptions based on an arbitrary dollar amount, this approach should be carried through to other affected sections of NI 45-106. |
| | **Is the AI exemption an adequate alternative to the MA exemption?** | Yes, the AI exemption in its current form is an adequate alternative.<br><br>The use of the AI exemption is a better tool than this limit of size.<br><br>If the MA exemption was repealed and the AI exemption was retained in its present form, the ability of small and medium sized enterprises to raise capital would be less seriously impacted than otherwise. While not in my view an entirely satisfactory alternative to the MA exemption, the AI exemption would be an alternative in perhaps a majority of cases.<br><br>From our involvement with current clients that are raising funds, there will likely be a minimal impact on capital raising if the $150,000 threshold is increased, as this exemption is very seldom relied upon. Most investors that have $150,000 to invest in a single issuer may fall into the AI category. However, there is the concern that individual investor has $150,000 in their RRSP's, RIF's, etc. that they use for the investment or they are able to borrow against the equity in their primary residence to reach the $150,000 investment threshold. These investors should be protected.<br><br>We believe that other exemptions – all of which have some connection to the stature of the investor or prospectus like disclosure particularly the OM exemption – can be redrafted to ensure that capital raising can continue while ensuring adequate disclosure. Some provinces have dollar limits on Offering Memorandum but it seems inappropriate to obviate anyone paying $150,000 the right of action for misrepresentation and disclosure available in that exemption yet it's only available to small investors.<br><br>Repealing the MA exemption would likely have little adverse effect on the ability of issuers to raise capital as there are a sufficient number of other exemptions, such as the AI exemption, which can be used.<br><br>We believe in most cases an investor who can afford to invest $150,000 in a single issuer is in all likelihood an accredited investor. |

| No. | Topic | Comment |
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| | | Given that the vast majority of persons availing themselves of a MA exemption would fit within the current definition of an accredited investor (since a considerable amount of financial assets or income is needed to meet the MA exemption threshold), we do not think it likely that the repeal of the MA exemption by itself would materially affect issuers' ability to raise capital.<br><br>We utilized the MA exemption only until we were able to utilize the AI exemption uniformly across all jurisdictions in which we were raising capital.<br><br>It is our opinion that the elimination of the $150,000 threshold exemption would have little to no impact on capital raising initiatives. As practitioners in the financial industry, we have successfully raised capital through private placements for more than 100 issuers using only the AI exemption.<br><br>No. Other exemptions should be introduced.<br><br>No. It classes out an entire population of investors and again only looks at assets for sophistication analysis.<br><br>The MA exemption should be eliminated and the AI exemption could be broadened to include additional criteria, especially educational background to include those with professional designations.<br><br>If the current $150,000 threshold for the minimum amount were to change (increased or repealed), this would not have a big impact on our ability to offer pooled fund strategies to our institutional clients as our standard minimum investment amount far exceeds the current MA exemption threshold. We typically depend on the AI exemption given our clients are institutional investors. We would use the MA exemption only to the extent that a client does not meet one of the accredited investor definitions. |
| **Accredited Investor Exemption** | | |
| | **Do you agree with retaining the AI exemption and definition of "accredited investor" in their current form? Are the current financial thresholds appropriate?** | **<u>Yes, retain in its current form</u>**<br><br>If an investor has $1 million of net investable assets or makes $200,000 individually or $300,000 with a spouse for the past three years, they have the ability to withstand some risk – should they choose.<br><br>We believe the AI should be maintained in its current form, with no increase to the income or asset thresholds. We would, however, recommend that an additional category for "finance professionals" be added to the definition of accredited investor in order to permit those persons to invest who have a degree of financial acumen, but not necessarily the income or net worth set out in the AI exemption.<br><br>We are of the view that the AI exemption is an integral part of fundraising for issuers in the Canadian marketplace. It is our view that changing any threshold amounts in the AI exemption would unnecessarily restrict the ability of Canadian investors from participating in exempt product offerings and that would unnecessarily interfere with the ability of market participants to access capital. It is our view that the current thresholds are appropriate metrics for determining the suitability of an investor to subscribe for exempt market product offerings.<br><br>We do not see a need to tighten the (AI) dollar criteria but would rather see the criteria expanded to include of the value of pension plans and investment real estate, which can be substantial assets for some investors. |

| No. | Topic | Comment |
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| | | Yes. The investor has the protection of its remedy for misrepresentation under common law. We would suggest considering statutory civil remedies for the investor, similar to those provided in Ontario for a misrepresentation in an offering memorandum.<br><br>Given the underlying rationale for the AI Exemption we do not believe that a requirement to provide additional disclosure in connection with its use should be necessary. We would suggest, as above, that consideration be given as to whether secondary market liability should be extended to acquisition of securities pursuant to a private placement and this may largely deal with any information-based issues in connection with private placements by reporting issuers. We do note that, in certain provinces, if an "offering memorandum" (as defined for purposes of the Act) is provided that statutory rights of action will apply. One clarification you may wish to consider is that if an offering memorandum is provided in such provinces to any investors in that province that it be provided to all investors in that province who will then have the resulting statutory rights of action. This would ensure that all persons have the same information base and have the same rights of action in connection therewith.<br><br>If an investor qualifies with more than $1M in financial assets, and $5M in total assets, then in our opinion, that person either has sufficient knowledge or can afford to consult with someone who has the knowledge in a cost effective manner. Raising the limits would only create havoc for fund raising without any real benefit as it would be protecting a very small percentage of people who have accumulated that level of wealth, but are not sufficiently sophisticated to either manage such investment based on their own investment acumen or engage qualified financial advisors to provide such advice.<br><br>I support the existing financial criteria set out in the AI definition but I believe the definition could be expanded to allow lawyers, accountants and others with investing experience to also be considered AIs. In the current economic environment, we should be assisting issuers in accessing capital from sophisticated investors as opposed to further limiting the available capital.<br><br>We advocate strongly that any changes to income and asset thresholds be made only in unison with any changes to the in the U.S. *"accredited investor*" exemption. Moreover, if a change is made to further restrict the AI exemption without a similar change being made in the U.S., we would be concerned that it would affect "*angels*" and "*super angels*" investing in Canadian start ups. If changes are made to increase the income and asset thresholds in both countries, we do believe that there would be a general adverse impact on start up fundraising. While we are not qualified to make a general statement, in our own experience, we have not seen that this exemption has been abused or that problems have resulted.<br><br>In respect of the AI exemption, we also support the retention of the exemption, and the existing income and asset criteria set out in sections (j)–(m) of the definition of Accredited Investor in section 1.1 of NI 45-106. These criteria, which enables retail investors to participate in the exempt market, provides issuers with a very important means of raising capital from investors with the means and desire to invest in such securities. As discussed in the Notice, the income and asset criteria may not always provide a consistently accurate proxy for sophistication. It is, however, very difficult to develop a definitive test for sophistication that is administratively efficient and practical to apply. We do not support the application of the alternative qualification criteria proposed in the Notice. The criteria, which includes investment experience, investment portfolio size, work experience and education is potentially subjective, resulting in regulatory uncertainty, inconsistent application and regulatory risk for those purchasing and selling securities in reliance on the exemption. The income and asset criteria provide an objective test that has a reasonable link to sophistication and the investors' ability to withstand loss.<br><br>With respect to the income requirements associated with the AI exemption, we find that these thresholds also present a genuine hurdle for potential subscribers. This |

| No. | Topic | Comment |
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| | | exemption is among the most widely used in Saskatchewan. We suggest that raising the limit significantly would have a substantial negative impact on capital raising markets in Saskatchewan for non-reporting issuers.<br><br>However, there are many investors – people such as professors, engineers, entrepreneurs, scientists, and teachers – knowledgeable people who would like to invest in such companies (I regularly get inquiries from such people) but are not allowed to do so because the barriers are too high. A reduction in the income test for accreditation would substantially increase the pool of available capital to these startups. At present, entrepreneurs can access less than 1% of the population.<br><br>Many things about the AI exemption should remain unchanged such as the definitions for qualifications. For example, the specific entities listed and individuals who have been registrants or registered with an SRO of financial bodies should always be qualified as accredited investors. We think the required changes relate to j) and k) of the list of definitions of a qualifying accredited investor under NI 45-106. Several definitions within j) and k) need to be addressed in relation to the AI exemption. One issue is the exclusion of all real estate in the definition of "net financial assets". We believe a better assessment of someone's ability to withstand a loss should include a measure of real estate that is not an individual's primary residence. Investment real estate should be included in the financial assets assessment since it is often regarded as a portion of one's investment portfolio. Another issue lies in the calculation of income and financial assets as it pertains to a business or privately owned corporation. In an effort to maximize tax efficiencies, should an individual be penalized for limiting the salary he takes from his business? As the sole shareholder of a business, are the assets of the business not theirs? We think that these assets and incomes should have a place in evaluating the over-all picture of an individual who wants to invest in an Exempt Market Product.<br><br>We do not recommend changing any threshold amounts in the AI exemption on the basis that it would unnecessarily restrict the ability of Canadian investors from participating in exempt market product offerings and that would unnecessarily interfere with the ability of market participants to access capital. The OBA agrees the additional categories suggested in the Consultation Notice that recognize investor sophistication based on: (i) investment experience, (ii) work experience or (iii) education should be added as additional categories to the AI exemption. We agree with the CSA that investor sophistication has a much broader base than just wealth accumulation and that the addition of these categories to the AI exemption would enhance the AI exemption's functionality for both investors and for market participants. The suggested categories in the Consultation Notice should not be looked as replacements for the current categories that are listed in the AI exemption, but as a way to extend the AI exemption.<br><br>**No, do not retain in current form**<br><br>No. Income and asset thresholds as a measurement of suitability are arbitrary. The participant of the registrant with respect to the suitability of a particular trade is more important than the arbitrary threshold; this allows the registrant to determine that a trade is not suitable, even though the income and asset thresholds are satisfied.<br><br>No. We believe that due to requirement for exempt market dealer registration has elevated the role and responsibilities of the exempt market advisor to a degree that makes these exemptions unnecessary.<br><br>We are of the opinion that the current AI qualification criteria should be simplified. For example, the requirement to have $5 million in fixed assets should be eliminated because in theory, an investor who has that much in fixed assets may not have much in liquid assets. A failed investment may create financial stress for an individual who in turn may be forced to liquidate their only fixed assets (i.e. their house which in today's market could easily be worth $5 million). For individual investors, the AI exemption should be determined by liquid assets or net income or a combination of both. |

| No. | Topic | Comment |
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| | | The AI Exemption should also be retained, but be modified with a) a reduction in the Income Test from the current level of $200,000 per annum to a new level of $100,000 per annum; b) a reduction of the net assets minimum for corporations, limited partnerships, trusts and estates from the current level of $5 million to a new level of $1 million.<br><br>A modification should be made to the exemption itself whereby issuers are required to provide a prescribed minimum amount of disclosure to prospective accredited investors.<br><br>This exemption should be retained in substantially its current form, with minor modification. The current requirements to be designated an accredited investor represent sufficiently high financial thresholds so as to guarantee a sufficient level of financial sophistication. Consider whether an additional avenue of qualification could be made available. For example, those who otherwise satisfy the requirements of an "eligibility advisor" within the meaning of NI 45-106 should be given accredited investor status, even though they may not meet the existing financial thresholds. The rationale is that if advice given by an "eligibility advisor" to a client is sufficient to allow the client to meet the test of an "eligible investor" within the meaning of NI 45-106, then logically the person who is the "eligibility advisor" must be in a position to assess the merits (or lack thereof) of a potential investment, and therefore should be able to protect themselves.<br><br>No. We believe the honour system of declaring oneself accredited could be improved to ensure investors are making true representations. Requiring more substantive proof and information to support the claim would result in only those that truly meet the standard using the exemption. We believe that limiting an investor's exposure to any specific exempt distribution to a small percentage (up to 10%) of their net assets, excluding primary residence or imposing a requirement at that level mandating a specific risk acknowledgement form is executed along with the registrant or seller involved is a better approach to limiting investor risk.<br><br>If the AI exemption was reduced – income $100,000 to $125,000 range, financial assets $250,000 to $350,000, net worth not including principal residence to $500,000 to $750,000 there would be a retail business in Ontario.<br><br>The minimum net worth test should be lowered by 50%, from $1M to $500,000. Net worth needs to include all real estate. The home an investor lives in is a major asset. This is currently excluded in the definition of "financial assets". The total household income should be lowered to a total of $150,000 or $90,000 per person. It should allow a person to "self declare" income for example a business owner that might draw only $60,000 from his business could declare himself "accredited".<br><br>There are two concerns with the current definition of financial assets. The first is the exclusion of real estate within the definition of financial assets. The definition excludes all real estate, even income-generating real estate that is not the investor's residence. This means that a retired investor with a $3,000,000 apartment building generating $180,000 a year in income (assuming no other assets) is not accredited. However, if the investor held the same apartment building through a corporation, the shares could be included under "financial assets" and he would be accredited. This result cannot be what was originally intended by the AI exemption. The second issue is with the definition of the word "securities" in the definition of financial assets. The rule does not expressly exclude non-tradable securities (such as shares in a private corporation), however it has long been assumed that "securities" means "liquid securities". This means that a person who privately owns 100% of the shares in a $2,000,000 transportation company (and doesn't take a reported salary in excess of $200,000 per year) would not be accredited (assuming no other assets or income). Since there are no exemptions that allow the company itself to invest based on its annual profits, this means there would be no way for the owner of the company to invest, whether on his or her own account or on that of the company. One might argue that the two examples above are specifically designed to show the weakness in the rules and are not common. In fact, they are very common. |

| No. | Topic | Comment |
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| | **Should the income and asset thresholds be adjusted for inflation?** | **<u>No, the thresholds should not be adjusted</u>**<br><br>The thresholds were set high originally and should not be increased.<br><br>No – current levels are fine – the percentage of the population who qualify as AI is still very small. Indexing numbers is a headache as forms will continually need to be updated. Inflation prices are not necessarily appropriate measures – they do not necessarily measure increases in income.<br><br>The thresholds should now be lowered, particularly if the investment is in an investment fund, to annual income of $100,000 or net financial assets of $500,000.<br><br>No the threshold should not be indexed to inflation but rather assess periodically. The income and asset thresholds should be cut in half.<br><br>While we understand that these numbers have not been reviewed in a long time (since being adopted by the Securities and Exchange Commission in 1982), we feel that suddenly adjusting any number to three decades worth of inflation will have a detrimental impact on the capital markets. Accordingly, we submit that exemptions should be reviewed no more than once every five years. We further submit that the current thresholds under the existing exemptions are sufficient today and were set too high when implemented.<br><br>**<u>Yes, adjust for inflation</u>**<br><br>To our knowledge, these thresholds have not been revised or adjusted (for inflation, among other things) in the 10 years since the OSC's introduction of the exemption. At a minimum, the net income threshold should be revised upwards to at least $245,000 - $443,000 to account for inflation. Once properly re-established, we would strongly support (in fact, see no principled reason to disagree with) an automatic process to adjust periodically this limit to account for inflation. This would reduce the cost and administrative burden of reconsidering the level, yet again, at some indeterminate point in the future. The financial and net asset thresholds should also be revised to both exclude investors' primary residence.<br><br>We believe that the current threshold amounts should be retained and be indexed for inflation.<br><br>Further to our comments above, we believe that the thresholds for income and assets should also be adjusted to reflect inflation. For example, we recommend that the CSA raise the income threshold to $245,000 to adjust for inflation since 2001, the year the Ontario Securities Commission first adopted the exemption.<br><br>This is a sound recommendation if it is published annually (rounded off to the nearest $1000) and eliminates the continual revisiting of the issue by the regulators. Many industry participants undoubtedly find it difficult to plan strategically when exemption limits are continually revisited and/or changed. |
| | **Should individuals be able to acquire securities under the AI exemption?** | Absolutely, individuals should be able to acquire securities through a registrant under the AI exemption. We also feel that individuals not at the AI level ought to be able to invest as well through other exemptions including the OM exemption to allow regular Canadians a chance to diversity their portfolios.<br><br>We believe that all securities should be issued with sufficient disclosure of risk factors to allow the buyer to make an informed decision. Where a registrant is involved in selling these securities, we believe that the registrant has duties to know your client and civil liability through an agent – client relationships and recommend that be increased to a fiduciary obligation to act in the best interests of his client, the purchase of those securities. |

| No. | Topic | Comment |
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| | | We think the exemption works fine for individuals and it is essential to capital raising in our industry that access to that exemption be available to individuals.<br><br>The assumptions underlying the exemption are the same for individuals as they are for institutions (and are possibly even more accurate for individuals). That is, I would expect a person to be more diligent with their own finances than an institution.<br><br>With respect to some of the possible limitations to the "accredited investor" exemption mentioned in the Consultation Note, [the commenter] offers the following comments for consideration:<br>• limiting the "accredited investor" exemption to non-complex products would lessen the need to assess the sophistication of the investor, but could unnecessarily limit truly sophisticated investors from being able to participate in complex product offerings;<br>• limiting the "accredited investor" exemption to non-individual clients falsely assumes that non-individual clients are always sophisticated and are always more sophisticated than individual clients;<br>• a rule limiting the "accredited investor" exemption to non-individual clients may be vulnerable to circumvention through incorporation by the individual investor. |
| | **Should an investment limit be imposed on AIs that are individuals?** | Generally, no. However we support a cautionary statement by the issuer that no more than 10% of net worth should be allocated to alternative investments as of benefit.<br><br>No – an upper limit would be very damaging to fund formation and to the financing of private companies, which depend on investment from AIs, often in very sizeable amounts.<br><br>[The commenter] goes beyond the AI criteria and also uses a "percentage of net worth" test to ensure that the amount being invested is prudent. This will vary by the nature of the investment but will generally not exceed 5% for a start-up investment. Even here, judgment is required as it may be fine for someone with $20 million dollars in financial assets to invest more than 5% in a single investment.<br><br>We strongly recommend that the size of a particular investment be limited to a certain percentage of investors' net worth in order to encourage diversification and to reduce investors' downside exposure to an amount that they can "afford" to lose. This is even more important given the absence of both a statutory fiduciary duty in Ontario on the part of financial service professionals and a reliable way to link investors' income or assets to financial expertise. A form of proportionality test would limit an investor's losses to amounts that are more manageable for that particular investor.<br><br>Given our view on the need for a registrant in these situations, an imposed limit is not in keeping with each unique individual's financial situation, risk tolerance, investment objectives and time horizons. Each investor is unique and arbitrary limits are penalizing.<br><br>No, there is such a diversity of products with varying risk characteristics available in the exempt market that this would impose an arbitrary restriction on investors or portfolio managers acting on their behalf with no offsetting benefit. For example, there is a material difference in the risk of a broadly diversified pooled fund compared to that of a speculative start-up but a single investment limit would treat them as identical. In fact, an investment limit could deny investors' access to a wide range of investment strategies that they or their portfolio managers might deploy that would improve their portfolio construction from both a risk and tax management perspective. If there are concerns with the Al exemption in respect of specific types of offerings, then requiring either the involvement of a registrant who has an obligation to recommend only suitable investments to the purchaser or a portfolio manager is the best remedy. |

| No. | Topic | Comment |
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| | | Individuals in general do not have the sophistication to make such decisions. At a time when we did not have 9,000 CFAs in Canada alone, it may have been appropriate to look to means such as a financial threshold to establish such criterion. But, now with a proliferation of CFA and other worthwhile designations, it is appropriate to tilt the rules towards a skills-based model. We advocate that inside fully managed accounts being acted upon by advisors, the minimum be set to as small as $5,000. In addition, we advocate that if individuals are allowed to act on their own behalf then it be lowered to $25,000 so that if individuals make mistakes then they are more manageable.<br><br>[The commenter] encourages the CSA to consider incorporating into the "accredited investor" exemption an additional requirement that the investment represent no more than a specified percentage of the investor's total portfolio or net assets—perhaps in the range of 5 to 10%. Such a requirement would ensure that the potential loss of the entire exempt investment is one that the investor could sustain without dire financial consequences. It would also serve the related policy goal of discouraging undue concentration of an investor's portfolio in a single, potentially illiquid security. |
| | **Are there alternative qualification criteria we should use?** | In the case of a security of a listed issuer sold through a non-SRO member firm AND securities of issuers not listed and sold through an SRO member the criteria should be as follows:<br>(a) registrant has duty to act in best interest of client/fiduciary duty; and<br>(b) a registrant ensures the investor meets a "sophistication" test, which requires that an individual meets two (2) of the following four (4) criteria:<br>i. investor has carried out transactions of a significant size (at least $2,500) on securities markets at an average frequency of, at least, ten per quarter over the previous four quarters;<br>ii. size of investor's securities portfolio exceeds $1,000,000;<br>iii. investor works or has worked for at least one year in the financial sector in a professional position which requires knowledge of securities investment and has passed the Canadian Securities Course; or<br>iv. investor is a registrant, registered with one or more securities regulatory authorities in Canada.<br>v.<br>In the case of securities of non-listed issuers sold through a non-SRO member intermediary the criteria should be:<br>(a) a registrant has a duty to act in the best interest of the client/fiduciary duty<br>(b) a registrant ensures the investor meets the "Sophistication test" described above, and<br>(c) independent certification of the investor's fulfillment of the Sophistication test be obtained – from a third party with no financial interest in any transaction.<br><br>The basic guideline (but not rule) should be 10% of net worth can be invested into any investment by AIs.<br><br>As we understand the regulations, the *financial test* definitions are designed to treat spouses as a single investing unit – we believe this should be re-assessed or a requirement applied that would require the non-investing spouse to concur in writing with any investment falling under the AI exemption.<br><br>AI exemption should include educational, work, and investment experience. There should be a minimum such as complete of the Canadian Securities Course or equivalent courses.<br><br>The CSA should provide checklists of what information is expected to be requested and kept on file in order to determine whether an investor qualifies as an AI. We |

| No. | Topic | Comment |
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| | | have no issue in excluding an investor's principal residence from the Financial Assets Test, however, any other real estate such as a cottage, farmland or other investment property should not necessarily be excluded. There is also increased concern over excluding other real estate from the Financial Assets Test since baby boomers are retiring and may no longer readily satisfy the Income Tests under the AI exemption, thus further shrinking the pool of available investors. The CSA should include other real estate assets (other than an investor's principal residence) in the Financial Asset Test.<br><br>The CSA should allow illiquid securities in the Financial Asset Test.<br><br>If the CSA does strongly believe in increasing the threshold, perhaps a graduated threshold may be considered. For example: i) investors, alone or together with a spouse, with a financial net worth of $1 million - $1.999 million or net income of certain amounts may be able to invest any amount up to a maximum of $150,000 on a particular investment; ii) investors, alone or together with a spouse, with a financial net worth of $2 million - $4.999 million or net income of certain amounts may be able to invest any amount up to a maximum of $300,000 on a particular investment; iii) investors, alone or together with a spouse, with a financial net worth of $5 million or greater or has net income of a certain amount may be able to invest any amount with no maximum on a particular investment.<br><br>Does the security strike a market based NAV? We believe that this factor captures the risk difference between a true "capital raising" venture and a pooled fund. The NAV requires a daily/weekly pricing mechanism based on an independent, verifiable consensus such as an index. It is a public valuation of a private distribution which is subject, in certain jurisdictions, to an annual audit.<br><br>The opportunity here is to expand the qualification criteria to include investors on the basis of their ability to adequately assess investment risk and portfolio suitability rather than seeking to curtail investor activity in general.<br><br>We would encourage the CSA to consider recommending a new prospectus exemption that would essentially provide that the prospectus requirement would not apply to a distribution of a security by an issuer to an individual if the individual investor and the issuer were able to satisfy certain criteria. Such criteria would include that (i) the security has an acquisition cost to the investor of not more than 5% of such investor's total financial assets before taxes, but net of any related liabilities; (ii) the issuer provides ample warning to the investor of the speculative nature of the investment and the potential restrictions on transfer of the security; (iii) the issuer requires each investor to respond to questions demonstrating an understanding of the level of risk applicable to the investment and the risk of illiquidity associated therewith; and (iv) the investor provides the issuer with reasonable evidence of its net financial assets.<br><br>As the CSA notes, a number of factors, including potential regulatory changes, could justify the development of new qualification criteria, including whether the issuer of the security is a reporting issuer, the security is novel or complex, disclosure is provided to investors (including risk factor disclosure), and if a registrant is involved in the distribution who has an obligation to recommend only suitable investments to the purchaser.<br><br>Redefining financial assets to include investment properties, whether income producing or not, as a financial asset (exclusion of the primary residence). Ownership and income from a business should be included pro rata to the ownership as provided by the shareholders list, to be included in financial and fixed assets and income. Create a short form standard document that outlines the "offering" in plain English with minimum requirements such as, but not limited to, risks and liquidity restraints that must be distributed as part of the evaluation process.<br><br>We respectfully suggest that consideration be given to amending the AI rules to provide for different classes of investors, each with different levels of investor |

| No. | Topic | Comment |
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| | | protection needs and ability to withstand loss. Staff of the CSA would have to make the precise formulations as to the classes, but the broad outlines could be as follows:<br>- permitted clients along the lines set out in NI 31-103. The intention would be to exclude most individual or retail investors. This class of market participants (banks, brokers, institutional investors) whose function is to move capital around should be able to do so relatively unimpeded, since they have sophistication and market power to obtain the information they need and thus have little need of regulatory intervention to correct for information asymmetries;<br>- seasoned accredited investors: mostly, those accredited investors, excluding the permitted clients, described in NI 45-106. These investors could be high net worth individuals and smaller enterprises, but they are generally not persons involved in the capital markets on a day to day basis. These investors should be able to demonstrate in some fashion, through some combination of net assets, investment or other relevant business experience and educational attainment (a CA, MBA, CFA, CSC) that they have some degree of sophistication and ability to withstand loss. The seasoned accredited investors should have fewer constraints on their investment activities; however, the rules could make certain products, such as very complex structured or securitized product, off limits.<br>- Novice or junior accredited investors: there should be a new category for accredited investors who wish to participate in the exempt market, but are in need of additional constraints, by limiting, for example, the amount such investors can invest in any given year and in any given investment. This could be reinforced by limiting the amount that an issuer could raise in reliance on this exemption.<br><br>In our view, there should be no objection to master trusts being considered to be accredited investors from a policy perspective (given the fact that they are essentially similar vehicles to the other entities set out in the definition). We recommend, in the interests of clarity, that the following additional type of entity be added to the definition of accredited investors: "a person that has been established by pension funds referred to in paragraph (i) for the benefit of the beneficiaries of such pension funds." We also assume that this entity would be considered to be purchasing as principal even though has many ultimate beneficiaries (but this is not different from an investment fund), but if there is any doubt about this, we urge the CSA to add a reference to this new accredited investor being deemed to be purchasing as principal for the purposes of section 2.3 of NI 45- 106.<br><br>In the context of the establishment of a private equity or investment real estate fund, often structured as limited partnerships, investors are sometimes advised to invest by way of family trusts for the purposes of optimizing tax efficiencies. Such family trusts are often structured as discretionary trusts for the benefit of the living and future lineal descendants of such individuals. Beneficiaries of such family trusts are the beneficial owners thereof. Sub-paragraph (t) of the definition of "accredited investor" provides an exemption for entities in respect of which all of the owners of interest, director, indirect or beneficial are persons that are accredited investors. Since a young child, or further, an unborn child, both of which would routinely be beneficiaries of the family trust, is typically not an accredited investor, the family trust is by definition not an accredited investor. Further, since the family trust is established as a single purpose entity, it does not have any financial assets which would allow it to qualify under a different sub paragraph of the definition of accredited investor. We are thus left with the anomalous result that a wealthy individual or family which would otherwise easily qualify as an accredited investor but for the structure of its investment, cannot avail itself of the exemption. This, despite the fact that all of the policy concerns surrounding the AI exemption would suggest that the family trust be able to rely on such exemption. In order to rectify the described anomaly, we would suggest that the definition of trusts used in Section 2.4(2)(k) of NI 45-106, be used in the context of the AI exemption, namely, that in order for a trust to qualify as an accredited investor, the requirement should be that a majority of the trustees are accredited investors.<br><br>Education or work experience as a basis for qualification would not be practical and would be difficult to implement. The only possible exception could be an individual's work experience within the investment industry as allowed for in the U.K.<br><br>With respect to the issue raised in the Consultation Note regarding alternative qualification criteria for individuals, such as education, investment experience and work experience, [the commenter] is supportive of the adoption of such alternative criteria as useful indicators of investor sophistication. However, imposing a general |

| No. | Topic | Comment |
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| | | requirement to determine that the investor is sophisticated may not be practical unless there are objective criteria for making these assessments.<br><br>Fundamentally, an investor who does not have (1) a certain level of sophistication, (2) the ability to withstand financial loss, (3) the financial resources to obtain expert advice, and (4) the incentive to carefully evaluate the investment given its size, should not be able to invest in reliance on these exemptions.<br><br>Our recommendation would be that an individual who is a "professional" in the securities industry, having access to all of the expertise within his or her firm should be permitted to rely on the AI exemption. The trading frequency test applied in the UK is not, in our view a true measure of an individual's abilities as an accredited investor; such a test only identifies that investor as being a frequent trader. More consistent with our recommendation is the UK test as to whether the person has worked in the securities industry for a minimum period of time, which we would consider an appropriate qualification for the AI exemption.<br><br>The criteria should be limited to one of: asset amount; income amount; education; work experience; or investing experience.<br><br>We do not believe that additional qualification criteria should be added for individual investors under the AI exemption as placing further criteria on investors or start ups would, we believe, adversely affect capital raising.<br><br>We feel the current criteria in place are adequate and that consideration should be given to including individuals with certain professional designations and work experience under the definition of accredited investors.<br><br>We would submit that the other possible criteria suggested, as set forth in the Consultation Note, such as educational background, work experience, investment experience and the like should not detract from the availability of the existing Exemptions based on financial wherewithal but may, if determined appropriate, be considered as an independent basis for availability of an exemption.<br><br>We are of the view that an income and asset test is the appropriate basis for the AI exemption and an adequate proxy for an individual investor's sophistication, education, work or investment experience. The "bright line" income and asset criteria means that it can be easily relied upon with certainty by both issuers and investors. Attempting to base the exemption on an individual's education, work or investment criteria will cause uncertainty and be problematic to apply. In addition, certain of the criteria suggested to supplement or replace the asset and income test do not in our view represent appropriate proxies for sophistication (for example, completion of the Canadian Securities Course). Other proposed criteria, such as work experience in the financial industry, are unduly restrictive and will deny access to the exempt market to persons who do not meet such limited criteria but are otherwise sophisticated. We therefore are of the view that the AI exemption should be retained in its current form and be based on an income or asset test for individual investors. We note that the bright line test based on income and assets and the current thresholds are also internationally comparable. |
| | **Should AI status be certified by an independent third party?** | Certification of an investor's AI status by an independent third party should not be required.<br><br>Perhaps a choice by the investor of i) verification of their status by the investor (i.e. tax returns or month-end statements) or ii) certification by an independent third party.<br><br>For non-brokered offerings, the CSA may instead require the issuer to obtain reasonable proof from the client such as a pay stub, T4 slip, or other documents. |

| No. | Topic | Comment |
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| | | A brief form available through securities regulators and any exempt market participant which, in one page, requires an investor to complete a worksheet that relates their net worth and/or income to the specific investment they are considering, both in terms of percentage allocation of their overall portfolio as well as a risk adjustment they derive themselves. Such a document, accompanied by reasonable back-up documentation (e.g. tax assessment, portfolio summaries, etc.) could be independently validated (e.g. notary style) by the investor without compromising privacy, and submitted along with their investment subscription for a particular investment. The exercise of completing such a document would be instrumental to the investor's clearer understanding of the suitability of any given investment and practically demonstrate both prudence and thoughtfulness in the investment decision-making process.<br><br>We also support a requirement to have very clear disclosure in about the Accredited Investor criteria included in the subscription agreement, such that investors are clearly informed about the criteria that they must meet to use the exemptions. We suggest the level of disclosure be similar to what was included in sections 2 and 3 of OSC Staff Notice 33-735 *Sale of Securities to Non-Accredited Investors,* which provides details as to what is and is not included in the income, financial asset and net asset tests.<br><br>Regulators should more clearly define what is considered adequate supporting documentation for AI status. We suggest issuers be obligated to obtain from investors a copy of one or more of the following: (a) Most recent Tax Return; (b) Notice of Personal Tax Assessment; (c) balance sheet certified by an independent accountant; (d) letter from independent accountant or legal counsel as to whether the individual meets the income , financial asset requirements and/or other criteria required to be considered an Accredited Investor. In any event , all dealers selling to AI investors should have documented procedures for ensuring unsuitable investments or financing are not recommended to retail investors.<br><br>We do not believe that compliance with the qualification criteria under the AI exemption should be considered during the current review of the AI exemption. The logistical realities of providing a "*certification*" would, in all likelihood, be cumbersome. For example, a "*certifier*" might be required to review underlying financial statements and tax returns of the individual in order to satisfy himself that the qualification criteria are met. We do not believe this would be practical and would seriously impede the ability of an investor to rely on this exemption.<br><br>A requirement of independent certification of qualification criteria would be a significant disincentive to individuals taking the benefits of the AI exemption. It would also be intrusive into the private affairs of individuals and would be resented by many, who would consider their own acknowledgements should be sufficient, especially taken with their risk acknowledgement forms. A third party certification requirement would also add cost to the individual investor, as well as impeding the smooth flow of the capital gathering process.<br><br>Recommend a certification requirement (by way of notarized document, for example) at or prior to point of sale, either by a senior representative of the vendor firm or an independent third party such as a lawyer or accountant.<br><br>It would make every one's job easier if we could get Accountants or Lawyers to certify the AI for individuals. We advocate that it be considered.<br><br>Yes, however independent third party certification should come with a benefit to the investor in the form of simplified subscription documentation. Further, a variety of certification options should be available with the intent of harmonizing with investors' current financial activities (e.g. banking, tax reporting, etc.) rather than an arduous or expensive process that is completely independent of regular financial activities. |

| No. | Topic | Comment |
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| | | Absolutely not. The logistics, administration and cost associated with this idea far outweigh the perceived benefits. If an investor chooses to be dishonest as to their status and the investment fails, then they hopefully learned a lesson about following the rules. Why should we tailor our securities laws in an effort to protect those who willingly falsify documents? Personal accountability of the investor has to come into play at some point.<br><br>No. Many accredited investors, particularly corporate executives, do not have legal and accounting relationships so the cost of establishing a relationship, providing evidence of income and assets and obtaining a certification will not be trivial. Even those who have relationships will be forced to provide financial disclosures and incur costs that they would rather not.<br><br>During our consultation process, we canvassed whether market participants would prefer if a third party should be required to certify and/or determine whether an investor satisfied the applicable tests for individuals under the AI exemption. The main concerns raised included the unnecessary burden it would place on market participants and investors, and uncertainty around the frequency of certification/verification (e.g., would it have to be done for every transaction, quarterly, annually, etc.) and whether that would impact the sales cycle and delay timely completion of transactions. A further concern relates to the diminishment of the responsibility of the registrant in an exempt market transaction and whether regulatory oversight would be enhanced by effectively placing the accountability for investor qualification outside the scope of regulators by delegating it to third-parties who are non-registrants.<br><br>Most issuers when conducting a private placement of securities provide each investor with a subscription agreement, investor questionnaire and certificate. Issuers often rely on these documents alone to satisfy themselves that an investor meets the financial requirements of an accredited investor. As has been frequently demonstrated, this is not fool-proof in confirming that a particular retail investor is truly an accredited investor. Regulators should require issuers to directly confirm that the statements made by each investor as to their status as an Accredited Investor are indeed correct to the best of that issuer's knowledge and that the statements have a reasonable air of being accurate, consistent and credible.<br><br>Issuers should be required to take proactive steps when engaging agents to sell their securities to accredited investors. These steps include: (1) explaining the importance of compliance with the AI exemption; (2) providing clear instructions to the agents; (3) supervising the agent's efforts; and (4) independently confirming each investor meets the definition of an accredited investor.<br><br>As identified in the Consultation Note, one issue with the AI exemption is ensuring compliance with the qualification criteria. We do not support the CSA's suggestion to require an investor's accredited investor status to be certified by an independent third party, such as a lawyer or qualified accountant in order to improve compliance. There are already safeguards built into meeting the obligation of ensuring exempt securities are only distributed to exempt purchasers. For instance, NI 31-103 requires registrants to collect KYC information, which includes the client's financial circumstances. Similarly, registrants must take reasonable steps to ensure that a particular investment is suitable for a client. In addition, NI 31-103 imposes a record keeping requirement to support KYC findings.<br><br>In our view, mandating a certification requirement would add another layer of costly compliance that is unnecessary given that registrants already have existing registrant obligations and safeguards. PMs, by virtue of their relationship with clients, already have extensive knowledge of clients' financial situations. In addition, it is not entirely clear that this type of certification would be feasible given that lawyers and accountants will only be aware of the assets/liabilities that an investor discloses. We recommend that any non-compliance identified with meeting the AI exemption qualification criteria should be dealt with through the enforcement regime, as regulatory concerns about market participants following securities laws fall within the enforcement ambit and should be viewed separately. |

| No. | Topic | Comment |
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| | | The CSA should bolster and make public its compliance functions with respect to reliance on the AI exemption to ensure only those who qualify purchase exempt securities. Several decisions of securities regulators from the past year support the contention that some issuers/dealers are failing to properly apply the AI criteria (see *Skyline Apartment REIT*, *MRS Sciences, Maple Leaf Investment Fund Corp and Aurora Re* cases).<br><br>CSA needs to seriously consider who will be responsible for qualifying investors, who will be responsible for adherence to the available exemptions and finally, what will motivate them to do so. |
| | **Are there other investment limitations we could impose?** | Using a questionnaire to assess entrepreneurial and industry experience, unrelated to any specific investment, which ascertains these traits among potential investors is an alternative that could assess education and experience if additional investor protection is sought.<br><br>Mandatory membership in an independent dispute resolution process (IIROC arbitration might be an example if its $500,000 limit was increased).<br><br>The CSA may also want to consider including benchmark(s) for financial expertise, such as the size of an investor's securities portfolio, number of trades made per quarter, educational background or professional credentials, or the adoption of a basic questionnaire to assess purchasers' financial sophistication.<br><br>We are of the view that introducing additional requirements would unnecessarily complicate qualification and change the nature of these exemptions, which work well in their current form.<br><br>Adding a proportionality test of net assets, exclusive of investors' primary residence. We strongly recommend that the size of a particular investment be limited to a certain percentage of investors' net worth in order to encourage diversification and to reduce investors' net worth in order to encourage diversification and to reduce investors' downside exposure to an amount that they can "afford" to lose. This is even more important given the absence of both a statutory fiduciary duty in Ontario on the part of financial service professionals and a reliable way to link investors' income or assets to financial expertise.<br><br>The limitations I could understand would involve fixing maximum percentages for investments of investors' total financial assets, require financial and other basic issuer disclosure and perhaps enhanced risk acknowledgement, all as stated above.<br><br>No. Should this exemption remain, individuals should have the same criteria as do institutions as we would expect a person to be more diligent with their own finances than an institution.<br><br>We believe that regulators could rely on the advisor-investor relationship to better protect individuals who are active in the exempt market. By its very nature, the AI exemption assumes the individual investor has the sophistication and financial wherewithal to both make independent investment decisions and absorb losses. There is no more cost-effective way to provide clarification on the nature of such risk than with the advice of a competent advice provider who is also a registrant. If the investor wants professional third-party advice, then he or she should consult a professional financial adviser. The addition of a requirement for a risk acknowledgement form will highlight for registrants, dealers and individual investors that the responsibility for the investment decision lies with the investor. |
| **Impact on capital raising** | | |
| | **Role of small and medium sized enterprises (SMEs)** | …SMEs employ millions of people and contribute to new job creation. After the family, friends and close business associates exemptions the only ones SMEs can look to are the MA and AI exemptions (an offering memorandum is often too costly or burdensome in relation to the amount of money to be raised for seed stage companies, and OM isn't available in Ontario anyway). |

| No. | Topic | Comment |
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| | **in Canadian capital markets** | I also see the need of small and medium sized businesses for access to the investment capital on a cost effective basis. If the proposed changes are implemented, fewer investors will be qualified to provide capital to businesses which need it. I urge that the CSA not increase the costs to small and medium sized businesses by making it more difficult to access required capital.<br><br>A reduction in the income test for accreditation would substantially increase the pool of available capital to these startups. At present, entrepreneurs can access less than 1% of the population.<br><br>If the MA exemption was repealed and the AI exemption was retained in its present form, the ability of small and medium sized enterprises to raise capital would be less seriously impacted than otherwise. While not in my view an entirely satisfactory alternative to the MA exemption, the AI exemption would be an alternative in perhaps a majority of cases.<br><br>The AI exemption is a key building block to the formation of capital into funds that finance emerging companies, growth companies and larger more established businesses.<br><br>While our experience is as legal counsel to issuers and underwriters, it would appear to us, at least anecdotally from our experience, that the AI Exemption has been a very valuable tool in the capital raising exercise by oil and gas and other resource issuers. We do note that it has also provided access to private placements by retail and other individual investors that might not otherwise have been offered participation in private placements, including of non-listed issuers, which otherwise would have been available only to institutional investors. Further, in the case of issuers that are either not large enough or for other reasons cannot raise money from institutional investors, we would, based again on our anecdotal experience, suggest that the AI Exemption has been utilized as a valuable tool for raising capital.<br><br>In our experience, the AI exemption is relied upon to a much greater extent than any other capital raising prospectus exemption. We are concerned that any material increase in the monetary thresholds associated with the AI exemption would restrict the availability of private financing and significantly impair the ability of small and medium sized issuers to raise capital, which would, in our view, have a detrimental effect on the broader economy.<br><br>By severely restricting the number of people who can invest in the Exempt Market, the rules are limiting the ability of private corporations to raise capital without the expense and time of a formal prospectus. This works against one of the regulatory regime's mandates, namely, the oversight of efficient and orderly markets that allow for the capitalization of industry. This is especially critical at a time when volatility and uncertainty make it difficult for issuers to raise capital in the public market, and venture capital funding has been suffering a 10-year drought in Canada.<br><br>The AI exemption is one of the most frequently used exemptions. However, the AI Exemption has the advantage over the MA Exemptions as the investor can determine the level of exposure or financial risk; it is not set at an arbitrary high number.<br><br>The AI exemption is vital to small and medium sized issuers, who frequently rely on that exemption for access to private capital, which is essential to their development. In our experience, this is particularly true for start-up issuers, including oil and gas exploration and development companies, oil and gas service companies and issuers engaged in the development of technology in Western Canada, and junior mining exploration companies and high-tech start-ups in Eastern Canada. We have acted for many such issuers who sourced the initial capital required to acquire assets and commence business through private placements undertaken in reliance upon the AI |

| No. | Topic | Comment |
|---|---|---|
| | | exemption. Many of those organizations have gone on to become significant contributors to the economy in Canada, particularly in Western Canada. A considerable number of those issuers have also generated significant returns for their investors. Alberta has an active accredited investor community; many of the members of that community have made significant returns in the oil and gas industry and are now providing seed capital to facilitate technology innovation, an area that has traditionally struggled to find funding in the early stages.<br><br>The CSA should consider easing restrictions on the exempt market to promote access to capital and financing of small and medium size companies in particular while ensuring satisfactory investor protection safeguards are in place.<br><br>As discussed below in more detail, while we acknowledge the often competing policy objectives of investor protection and capital market efficiency**,** we are very concerned that imposing additional restrictions on the use of the current AI exemption will have a deleterious effect on capital formation for early stage companies, particularly those in the technology space. We believe that companies are increasingly being required to compete for resources, financial or otherwise, on a global basis and that it is very important, particularly in a North American context, that the regulatory environment in Canada not be seen to be more restrictive and less flexible than the regulatory environment in the United States. We also suggest below that, not only should you not be further restricting available exemptions, but you should be considering adding further exemptions, such as those relating to "*crowdfunding*", in order to assist early stage companies in raising capital. |
| | **Impact if thresholds for MA and AI exemptions were changed** | Raising the minimum amount may have an adverse impact on early stage capital raising and may preclude knowledgeable investors from making good investments.<br><br>Maintaining the MA exemption is critical for early-stage capital if the AI thresholds are to change. Other exemptions are currently inadequate to support vibrant early stage SME capital markets.<br><br>We strongly oppose any changes to the AI exemption that would reduce access to the exemption because it would make capital raising more difficult.<br><br>If the $150,000 exemption was removed, as we and others suggest, issuers will cry foul. To be fair, doing that alone would impair their ability to raise capital in the short-term. We argue that this change should be offset with a new exemption based on an investor's maximum exposure to the exempt market.<br><br>It is our opinion that changes to the income and asset thresholds would impact capital raising initiatives by reducing the pool of eligible investors (this assumes that the changes are to increase income and asset thresholds).<br><br>Institutional lending will be impacted for our business. Any fund that has assets less than that of a potential new threshold amount will not be able to join with other funds in a syndicate manner. This increases the exposure of the so called smaller fund as they will not be able to share the risks on larger deals and will strictly have to underwrite their own deals subject to 100% of the inherent risk.<br><br>Notably, a large number of the "small" percentage that has $150,000 to invest should already be categorized as an accredited investor. This said, and should this be raised alongside the AI asset thresholds, there would be significant impact in provinces such as Ontario, as the already small pool of investors allowed to invest would grow even smaller.<br><br>An increase of the MA threshold has the potential to have a negative effect on the ability of certain issuers to raise capital. A greater concern would be if the minimum thresholds of the AI exemption were adjusted upward as a far greater amount of issuers (particularly in Ontario) rely on this exemption. If the AI threshold were to be |

| No. | Topic | Comment |
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| | | increased, consideration would have to be given in Ontario toward possibly adopting the OM exemption so as to create an alternative to the AI exemption for issuers in raising funds in that province.<br><br>We believe that any substantial increase in income and asset thresholds would dramatically reduce an already limited exempt market and substantially impair the growth in the pooled funds market in Canada. This will reduce the opportunity set of investments for sophisticated investors, decrease the portfolio management vehicles available to improve diversification, stifle innovation and impair competition in an already oligopolistic industry.<br><br>Raising the minimums for the accredited investor will not provide additional protection and will negatively impact efficient and vibrant capital markets. We have recently gone through the licensing process under NI 31-103 to protect investors from unfair and improper or fraudulent practices. It is too soon to see if these changes have positively affected the market and provided greater protection. By increasing the minimums for the accredited investor at this time we will be unable to determine which program is providing the benefit.<br><br>From our involvement with current clients that are raising funds, there will likely be a minimal impact on capital raising if the $150,000 threshold is increased, as this exemption is very seldom relied upon. … However, if the AI thresholds were increased as well, there would be a significantly detrimental impact on capital rising, particularly in the provinces that do not have the OM exemption. |
| **Other issues** | | |
| | **Consultation and review process** | It is preferable to consult at an earlier stage rather than later in the rulemaking process, once draft rules have already been prepared. Early, conceptual consultation should lead to a better, more appropriate regulatory framework, and we encourage more early consultations by the CSA.<br><br>The public consultations were dominated by industry participants. The absence of consumer input undermined the consultation process. The regulators should engage in pro-active solicitation of investor advocates when engaging in these types of consultations. There needs to be increased regulatory transparency on policy development generally.<br><br>The Consultation Note does not explicitly acknowledge, nor specifically request comments on, the widespread use of these exemptions to distribute securities of investment funds. The use of the exemptions in that context raises very different issues than their use by industrial or commercial issuers for true “capital raising” purposes. The CSA should consider the two situations separately.<br><br>The explanation for undertaking a review of the MA exemption and the AI exemption at this time lacks sufficient detail as the aspects or features of the “global financial crisis” and “recent international regulatory developments” that raise concerns with reference to these two exemptions are not clearly explained. Absent some direct relevance to the Canadian capital markets, CSA resources could perhaps have been better directed to more immediate and pressing issues of concern to investors, distributors and issuers.<br><br>This review is premature given the recent adoption of NI 31-103 and the new obligations imposed on dealers under that instrument.<br><br>Rather than focusing on the MA exemption and AI exemption, a more comprehensive review of the exempt market framework is required. Other rules, especially restrictions on resale of exempt market securities, should also be re-examined. |

| No. | Topic | Comment |
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| | | We recommend that every three years the CSA review the "Accredited Investor" exemption provisions in their entirety and to engage in further rulemaking to the extent it deems appropriate for adequate investor protection. |
| | **Harmonize exemptions across Canada** | We strongly suggest that the CSA prioritize the elimination of local rules and carveouts included in NI 45-106 and other instruments in connection with any changes that are proposed. These variations increase the costs and complexity of raising capital in the exempt market. We are not aware of any valid policy rationale that would support treating purchasers in the Canadian exempt market differently based on their jurisdiction of residence.<br><br>Certainly the costs of prospectus level disclosure have not gone away, so the original rationale for the exemptions appears to continue to apply. For these same reasons, there would appear to be no need to add any additional criteria to these exemptions although the CSA ought to look into introducing additional exemptions from the prospectus and registration requirements based upon investment experience or education or work experience – so as to make a number of new exemptions available for sophisticated, trained or experienced investors.<br><br>The CSA, provincial regulators and SROs should develop a harmonized approach to risk and should refrain from identifying all exempt markets as inherently risky unless it can provide evidence that is inclusive of all offerings in the exempt market. It follows that the CSA should attempt to stratify the exempt market as undoubtedly not all exempt market products are or should be classified with the same risk profile. A stratification of products would allow for more appropriate risk assessment and management by those that offer such products and would provide greater and more accurate disclosure for investors. The CSA should also consider how to approach the risk assessment of exempt products that are managed by independent, qualified registrants (e.g. IFMs, PMs). Registrant oversight and management for exempt products should be viewed as equally credible as that oversight provided by the same registrant for prospectus based products.<br><br>We believe that if the AI exemption is retained in its current form, it should at the very least, be harmonized across Canada and PMs in Ontario should qualify as the "accredited investor" for fully managed accounts for investments in investment funds such as pooled funds. A key area for harmonization is the managed account exemption in Ontario. One of the classes of accredited investors in NI 45-106 is a registered adviser acting for a fully managed account (a discretionary account) in the account holder's jurisdiction. Under this exemption, the purchaser of the security (the account holder) doesn't need itself to be an accredited investor. The advisor is deemed to be the accredited investor. However, a portfolio manager acting on behalf of a fully managed account in Ontario is not an accredited investor when purchasing securities of an investment fund. Ontario has carved out this exemption when the exemption relates to securities of an investment fund such as a pooled fund. As such, a managed account in Ontario may only invest in an investment fund on an exempt basis where the holder of the account either personally qualifies as an "accredited investor" as defined in NI 45-106 or invests $150,000 in the investment fund in accordance with the MA exemption in section 2.10 of NI 45-106. This unharmonized section of the AI exemption makes it increasingly difficult for registered firms managing assets of clients located across different provinces, where in most parts of the country this is permissible. The practice of allowing investment managers to act as an accredited investor for their clients for investments in pooled funds should be consistent across Canada and it remains unclear as to why the OSC continues to have policy concerns. We recommend that Ontario re-evaluate the investor has actively hired a portfolio manager (who should qualify as the accredited investor). Like other provinces, PMs in Ontario have the proficiency, registration status and requirements, financial strength and human resources to support and properly service such accounts. We recommend that NI 45-106 be amended to allow fully managed accounts in Ontario to qualify as "accredited investors" for purchases of securities in investments funds such as pooled funds.<br><br>Harmonize NI 45-106 to provide regulatory consistency across Canada; specifically, a registered portfolio manager ("PM") acting on behalf of a fully managed account in Ontario should qualify as the accredited investor when purchasing securities of an investment fund; 2. For clients not dealing with a PM, maintain the status quo for AI exemption but add modifications to increase flexibility for investors using a PM; 3. Repeal the MA exemption for investors using a PM or lower the threshold amount; and 4. Independent certification of the AI exemption qualification criteria should not be mandated. |

| No. | Topic | Comment |
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| | | No threshold amounts should apply in respect of a distribution of investment funds to accounts that are managed by a portfolio manager on a fully-discretionary basis. That is currently the situation in all provinces, other than Ontario, as a result of the application of paragraph (p) of the definition of "accredited investor" set out in NI 45-106. We feel strongly that this should be made consistent across Canada by having subparagraph (p)(ii) repealed in Ontario. The threshold amounts should be at least doubled in respect of each exemption: in respect of the MA exemption, the threshold should be raised to at least $300,000; in respect of paragraph (k) of the "accredited investor" definition, the income test should be raised to at least $400,000 for an individual or, together with a spouse, $600,000.<br><br>The CSA should adopt a national and harmonized definition of an OM and provide guidance on: 1) what is and what is not considered an OM for marketing purposes; and 2) whether certain marketing materials may be exempt from the OM requirement.<br><br>One of the difficulties with conducting a private placement across Canada is the requirement to describe the statutory rights available to purchasers under certain prospectus exemptions, including the accredited investor and minimum investment exemptions. Typically these descriptions go on for pages, virtually guaranteeing that they will not be read. We suggest that the CSA adopt a uniform description of the statutory rights available to purchasers in the exempt market that satisfies the legislative requirements of all Canadian jurisdictions, in a similar manner as the statement of rights of withdrawal and rescission in item 30 of Form 41-101F1 *Information Required in a Prospectus*. We acknowledge that such a summary would need to address the differences in statutory rights that exist in different Canadian jurisdictions. We suggest, however, that the purpose of the requirement to describe these rights is to alert the investor that he or she has certain rights and they should consult a lawyer, not necessarily to provide the detail of these rights. |
| | **Offering memorandum exemption** | Consider implementing the OM exemption nationwide, with a prescribed form and risk acknowledgement statement – but remove the requirement to include financial statements in the OM where the issuer is an investment fund.<br><br>Consider implementing an OM exemption for "eligible investors" modernized for amount and declaration based on asset or income tests on a sliding scale.<br><br>There should be appropriate disclosure by the issuer as to risks, like in the current Offering Memorandum process. The OM process is not broken, although it needs amendment: it needs to lay out a business case in the OM or information sheet and its assumptions about the projected returns. This is missing in the OMs or project information sheets today. If those assumptions had been in the OM, those many failed companies over the last few years would have raised far less money as it would have been obvious that the numbers do not make sense given prudent real world assumptions. A limitation to consider is that an investor is allowed only 10% of his net worth into an Exempt Product investment as a guideline, with an option to override this in writing by the investor. It should not be a rule, only a guideline. A signed form, stating that an investor acknowledges he (or she) exceeds the 10% guideline should be introduced.<br><br>The offering memorandum and prospectus disclosure of risk are insufficient and inadequate as disclosure. Focus should be on suitability obligations as defined in *Re Daubney*.<br><br>I have reviewed other examples of OMs that provide investors with a level of disclosure that is on par with the level of a prospectus. Both OMs and prospectuses contain statutory rights of rescission and investors can sue for a misrepresentation. Perhaps the CSA could consider an "OM exemption" that would allow smaller investment managers to access the Exempt Market provided that the OM contained certain mandated disclosures. In my opinion, from the perspective of Exempt Market fund managers, the reticence to operate as a mutual fund isn't the requirement to draft a prospectus or have it reviewed by the CSAs; rather, it is the ongoing cost associated |

| No. | Topic | Comment |
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| | | with complying with the rules that apply to mutual funds.<br><br>Ultimately, we would like the MA and AI exemptions to remain intact and the OM exemption extended into Ontario. By extending the OM exemption to Ontario, clients would benefit from enhanced disclosure and securities regulators would be in a position to clearly focus on the behaviour of dealers and issuers.<br><br>In our view the model of the OM exemption and the Eligible Investor definition under it is the most appropriate policy direction to take for a variety of reasons. First, it levels the investor playing field across Canada. Currently, Canadians in most jurisdictions other than Ontario have far easier access to private markets than Ontarians. Second, it permits a certain level of investment ($10K) to be made by any investor, regardless of financial "eligibility" so long as certain other criteria are met, such as the delivery of an OM and the signing of a risk acknowledgement. Third, it offers investors the option of qualifying as "eligible" if they receive the blessing of an eligibility adviser as defined in s.1.1, in much the same way as the CSA is here suggesting that the Accredited Investor status be certified by a third party. Fourth, the income threshold is lower ($75K rather than $200K) and the net worth is lower ($400K rather than $1M Financial Assets) for an eligible investor than it is for an accredited investor, providing greater investor access to the exempt market at a time when the economy needs it and investors arguably want it.<br><br>Ontario needs to adopt the OM exemption and remove the $150,000 exemption. The offering memorandum provides the general population with the ability to invest in opportunities which are potentially uncorrelated to market. Many people we speak to are looking for investments are not directly tied to analyst expectations, hedge fund positions, or the behavior of irrational market participants. They're looking for an opportunity to invest in small companies with simple business models where they have direct access to the principals – investments which are directly tied to the success of the business.<br><br>While we understand the topic of this request for comment are the MA and AI exemptions, we would like to outline our strong disagreement with proposal (NI 41-103 Notice) *as referenced on page 5 [of the Consultation Note]* as eliminating securitized debt offerings from the Exempt Market through an OM would severely hurt the industry and its investors, and we also do not feel that the use of a prospectus specifically will improve the security of the investor, rather simply create a higher barrier to market entry. This leads us to the question of what protections do prospectuses provide that the OM exemption does not. Both provide disclosure but prospectuses more often than not contain disclosure that the majority of investors do not understand. The majority of investors will not take the time to read the prospectus and will rely on marketing materials in their judgement of an investment, unless an OM is provided with easy to comprehend transparency and explanation of the said business model. Securitized debt tools are utilized by many strong, performing businesses within the exempt market and we strongly suggest should not be eliminated. We feel strongly that securitized debt offerings should be allowed to continue within the exempt marketplace through the OM Exemption, and that the Province of Ontario should consider adopting said exemption.<br><br>Drop the requirement for an IFRS audited financial statement for issuers below a certain threshold, say a sub-$100,000 opening balance sheet or sub $2M total raise target. The costs are prohibitive. Rules & disclosure need to be reasonably aligned with project sizes, as a restaurant that needs perhaps $250,000 investment for a refurbishment needs to be treated differently than a $20M+ real estate or resource play. Different guidelines, with more and more disclosure requirements for larger players and associated sales community), somewhat less regulations for smaller deals. |
| | **Fiduciary duty on registrants** | All registrants who provide investment advice to retail investors should be subject to a fiduciary duty to act in the best interests of their clients.<br><br>The current suitability framework is inadequate.<br><br>The requirement of a fiduciary duty on behalf of advisors to safeguard investor interests is of critical importance in considering the exempt market because the current |

| No. | Topic | Comment |
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| | | statutory thresholds are only crude proxies for financial sophistication and not substitutes for the personal interaction between advisors and their clients.<br><br>The majority of Canadians are not sophisticated investors. Over a lifetime many Canadians accumulate substantial savings and most depend upon a registered representative to advise them on investments. Retail investors are generally not aware that the individual they depend upon for advice does not have a fiduciary duty and often may be a salesman with a limited range of products to sell. |
| | **Exempt market dealers** | EMDs are currently subject to less oversight, less regulation and do not form part of a scheme that provides compensation to investors in event of insolvency. EMDs that perform investment-dealer like activities should be required to join IIROC and not be permitted to avoid SRO oversight.<br><br>EMD's should be prohibited from selling prospectus qualified securities such as mutual funds and exchange traded funds to accredited investors. Currently, EMD's are able to hold themselves out as full service financial product providers and sell the same products as MFDA and IIROC dealers without being subject to the same level of regulation and oversight. This creates an uneven playing field in the industry and additional risks for investors. |
| | **Investor protection** | Requiring EMDs that perform investment dealer like activities to register with IIROC would improve investor protection through closer supervision, heightened compliance and insolvency coverage through CIPF.<br><br>In seeking to protect unsophisticated investors, broad mechanisms that exclude competent individuals should be avoided in favour of evidence-based, focused mechanisms. Focus on the practitioner or seller rather than the investors.<br><br>For us, a firm whose primary business is in a foreign jurisdiction where the CSA member(s) cannot effect investigations/enforcement should be off limits to retail investors.<br><br>We are concerned about seniors. The elderly, especially those with substantial savings, appear to be a designated target of unscrupulous "advisers" ; it is our view that special protections are in order. For seniors, capital preservation, dependable income /cash flow, time horizon, liquidity , de-accumulation profile, tax optimization and estate planning are key investment factors.<br><br>The key to protecting investors, however, is to use the AI criteria in conjunction with an assessment of suitability, as is currently performed by a registrant through the Know Your Client and other processes. Without such a linkage, a company can accept an investor's life savings simply because they are "Accredited". This makes no sense.<br><br>Investors in the exempt market are especially vulnerable because they do not have the benefit of regulatory oversight or access to full information regarding these investments. These investors could potentially be subject to a different (i.e. lesser) level of regulatory involvement if a fiduciary obligation were in place. |
| | **Examples from other countries** | The U.S. requirements are most relevant to the Canadian market. We note that U.S. is only now moving to a regulatory regime similar to Canada's – i.e. requiring more advisors and investment funds to register and making the financial asset test for AIs exclude the principal residence.<br><br>The U.S.SEC recently adopted an amendment to the accredited investor Net Worth standard which excludes the value of an individual's primary residence. This was done pursuant to Section 413 of the Dodd-Frank Act which stipulates that the SEC "shall adjust any net worth standard for an accredited investor, as set forth in the rules of the [SEC] under the Securities Act of 1933, so that the individual Net Worth of any natural person, or joint net worth with the spouse of that person, at the time of purchase, is more than $1 million (as such amount is adjusted periodically by rule of the [SEC]), excluding the value of the primary residence of such natural person…." |

| No. | Topic | Comment |
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| | | Ref http://www.sec.gov/news/press/2011/2011-274.htm The CSA may want to consider netting out all real estate and illiquid, difficult to value and non-income producing assets such as fine art or jewelry from the Net Worth calculation (if this is not already the case).<br><br>Regulations in the United Kingdom require investors to demonstrate expertise through, among other factors, frequency of investment transactions and practical experience in the financial services sector or related professions. The CSA could also consider allowing investors to demonstrate expertise, for example by adopting an online test or questionnaire to assess an investor's eligibility.<br><br>In terms of alternative criteria for an AI exemption, we note that under the European Union's *Prospectus Directive* of May 30, 2001, which came into force in the United Kingdom on July 1, 2005, distributions to "qualified investors" are exempt from the prospectus requirements. The *Directive* allows Member States to choose to authorize resident individuals as qualified investors when they expressly ask to be so considered. Such individuals must meet at least two of the following criteria: investment experience: the investor has carried out transactions of a significant size (at least 1,000 euros) on securities markets at an average frequency of, at least, ten per quarter over the previous four quarters; investment knowledge: the investor works or has worked for at least one year in the financial sector in a professional position which requires knowledge of securities investment; or portfolio size: the size of the investor's securities portfolio exceeds 0.5 million euros.<br><br>These "qualified investors" are listed in the Qualified Investor Register, which is publicly available (the information contained in the register may be delivered electronically only to issuers and other offerers of securities). In light of the U.K. model, many stakeholders will support additional criteria for accredited investors based on investment experience, or investment education, or knowledge similar to the EU's *Prospectus Directive*. Such criteria could include: investment experience (for example, the investor has carried out transactions of a significant size in securities markets at a given frequency); work experience (for example, the investor works or has worked in the financial sector in a professional position which requires knowledge of securities investment); or education (such as the investor has completed the Canadian Securities Course, achieved a CFA designation or has received an advanced degree in business or finance).<br><br>The usefulness of the foreign examples is limited because there is no discussion of the registration regimes in these countries and other investor protection provisions that may be applicable. |
| | **Northwestern exemption** | We are concerned about the implications of the Northwestern exemption for investors and recommend that it be revoked given significant investor protection concerns.<br><br>The "Northwest Exemption" should be reconsidered as it creates confusion for clients about the circumstances in which they have the protections offered by the exempt market dealer registration requirement, and it exposes clients to the risks of dealing with unregistered dealers without any corresponding public benefits. |
| | **Democratizing access to capital / "crowdfunding"** | Confidence in capital markets are eroded by perceptions that the financial industry allocates the best investments to themselves and financial industry fees are excessive.<br><br>See the *Entrepreneur Access to Capital Act* and related proposed legislation in the U.S. One proposal would cap company offering size at $1 or $2 million with certain conditions. Financial tests on individuals are limited. These bills balance an economy's need for early-stage capital with reasonable protections for investors more constructively than would excluding individuals from the definition of AI.<br><br>If the US bills are passed, it would provide a competitive advantage to small businesses in the United States by enabling greater access to capital, and ultimately, positive impact and economic growth.<br><br>Public support for fairer access to capital is evidenced by ordinary people providing capital for projects/businesses on websites such as Kickstarter and Kiva. This |

| No. | Topic | Comment |
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| | | supports the argument that people at all levels of income/assets can make effective risk decisions. |
| | **Educate investors** | It is my belief that education and not regulations is the answer. Education sessions must be promoted by the financial services industry and the legal and accounting profession together with the regulators. It is key that we address these issues and make people aware that they should and must consult professionals. After all the rules are there to protect investors from scams and not knowing the rules results in individuals selecting opportunities for immediate riches. I support the concept of licensing any type of involvement, subject to the scrutiny of a professional, before it can be made. |
| | **Social impact financing** | There is significant retail investor interest to provide financing to local organizations and businesses, particularly those driving local social and environmental impact. Our platform focuses on accredited investors, given the current regulatory framework and the potential availability of capital from these sources. However, we have fielded significant interest from individual, retail investors, who may not necessarily meet the criteria for an accredited investor, in financing local impact. Many stakeholders, local and global, in the emerging impact investing marketplace have reported similar interest from such individual, retail investors. There are an increasing number of organizations and businesses building market-based models to tackle social and environmental problems and turning to investors for financing. We are acutely aware of the large number of such organizations and businesses in Ontario. However, the relatively high cost of capital and the lack of access to capital are significant barriers to their ability to grow and advance their mission.<br><br>There is another area of urgent need for capital raising reform. Governments, NGO's and the community are recognizing "social capital" where investors are willing to accept limited financial rewards when combined with work to solve social and environmental challenges. These ventures also need capital. The CSA should develop a series of exemptions aimed at the formation of community capital initiatives – for profit, not for profit and for limited profit – over and above the current exemptions under review. Perhaps the next CSA request for comments will be a call for business owners and advisors to assist the CSA in fostering capital formation for small and medium size businesses and social capital groups. We believe that such an initiative would get a very significant positive response. |
| | **Report on exempt market data** | The CSA should review, analyze and report on the exempt market activity information it collects in the NI 45-106F1 report of trades (including Form 45-106F6 in BC), and update this information at least annually. The CSA should conduct a public consultation to review the content of NI 45-106F1 (including Form 45-106F6 in BC) to ensure meaningful regulatory and commercial information is being collected on a national and harmonized basis. The CSA should implement electronic filings of the NI 45-106F1 to simplify submission for market participants and provide easier access for analysis and review of the filings by the CSA.<br><br>It is important to identify where losses are occurring and causes of such losses so as to focus regulation. The CSA should also identify where funds are being raised; who is accessing securities in the exempt market; what they are purchasing; which intermediaries are involved. The CSA should publish this data or do research to obtain the data. It is difficult to comment on the issues raised in the Note without relevant data. |
| | **Private issuer and family, friends and business associates exemptions** | Raise the private issuer restriction of only 50 shareholders to something higher.<br><br>The 'friends, family and business associates' exemptions should drop the "close" adjective and include friends, family and business associates or spouses of these individuals.<br><br>We believe that a new category should be added under subsection 2.4(2), which would be an investor having received a written "Independent Legal Advice Opinion". A definition of Independent Legal Advice Opinion could be added to protect the public even more. As an example, the legal counsel would require a certain number of years of practice to render such an opinion.<br><br>We believe that the current definition of "private issuer" should be amended to stipulate that the issuer should only issue securities to beneficial owners of securities |

| No. | Topic | Comment |
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| | | (other than non-convertible debt securities), who fall under the categories at subsection 2.4(2), at the time of the new issuance. Such new definition would ensure that the "private issuer" status for an issuer is not lost where a transfer of securities is made pursuant to Regulation 45-102.<br><br>Although it may not be advantageous from a taxation perspective, service providers to SME's are unable to receive securities in exchange for services or goods while permitting the issuer to remain a private issuer. Maybe the current section 2.14 could be used in section 2.4 as a template and be modified accordingly based on the premise that the issuer would not lose its private issuer status if it were to use such exemption. |
| | **Resale** | Other aspects of the exempt market should also be reviewed, such as the resale rules which require first purchases to hold on to their securities for a period of time once they have purchased under an exemption. The resale rules are extremely complex and difficult for the average investor, let alone the sophisticated investor, to understand. |

**Annex D**
**Proposed Amendments to**
**National Instrument 45-106 *Prospectus and Registration Exemptions***

1. ***National Instrument 45-106 Prospectus and Registration Exemptions is amended by this Instrument.***

2. ***The title of the Instrument is amended by replacing "***Prospectus and Registration Exemptions***" with "***Prospectus Exemptions***".***

3. ***The definition of "***accredited investor***" in Section 1.1 is amended***

   ***(a) by replacing paragraphs (a) to (i) with the following:***

   (a) except in Ontario, a Canadian financial institution, or a Schedule III bank,

   (b) except in Ontario, the Business Development Bank of Canada incorporated under the *Business Development Bank of Canada Act* (Canada),

   (c) except in Ontario, a subsidiary of any person referred to in paragraphs (a) or (b), if the person owns all of the voting securities of the subsidiary, except the voting securities required by law to be owned by directors of that subsidiary,

   (d) except in Ontario, a person registered under the securities legislation of a jurisdiction of Canada as an adviser or dealer,

   (e) an individual registered or formerly registered under the securities legislation of a jurisdiction of Canada as a representative of a person referred to in paragraph (d), other than an individual formerly registered solely as a representative of a limited market dealer under one or both of the *Securities Act* (Ontario) or the *Securities Act* (Newfoundland and Labrador),

   (f) except in Ontario, the Government of Canada or a jurisdiction of Canada, or any crown corporation, agency or wholly owned entity of the Government of Canada or a jurisdiction of Canada,

   (g) except in Ontario, a municipality, public board or commission in Canada and a metropolitan community, school board, the Comité de gestion de la taxe scolaire de l'île de Montréal or an intermunicipal management board in Québec,

   (h) except in Ontario, any national, federal, state, provincial, territorial or municipal government of or in any foreign jurisdiction, or any agency of that government,

(i) except in Ontario, a pension fund that is regulated by the Office of the Superintendent of Financial Institutions (Canada), a pension commission or similar regulatory authority of a jurisdiction of Canada, **,**

***(b) by replacing "***that before taxes,***" with "***that, before taxes***" in paragraph (j),***

***(c) by adding the following paragraph:***

(j.1) an individual who beneficially owns financial assets having an aggregate realizable value that, before taxes but net of any related liabilities, exceeds $5 000 000, **,**

***(d) by replacing paragraph (q) with the following:***

(q) a person acting on behalf of a fully managed account managed by that person, if that person is registered or authorized to carry on business as an advisor or the equivalent under the securities legislation of a jurisdiction of Canada or a foreign jurisdiction, **,**

***(e) by deleting "***or***" at the end of paragraph (u),***

***(f) by adding "***, or***" after "***accredited investor***" in paragraph (v), and***

***(g) by adding the following after paragraph (v):***

(w) a trust established by an accredited investor for the benefit of his or her family members of which a majority of the trustees are accredited investors and all of the beneficiaries are the accredited investor's spouse or a parent, grandparent, brother, sister, child or grandchild of that accredited investor or of that accredited investor's spouse; **.**

***4. Section 1.5 is amended***

***(a) by deleting "***from the dealer registration requirement, or from the prospectus requirement,***", in subsection (1), and***

***(b) by repealing subsection (2).***

***5. Subsection 2.2(5) is amended by replacing "***Subject to section 8.3.1, if***" with "***If***".***

***6. Section 2.3 is amended***

***(a) by adding the following subsection:***

(0.1) In this section, "accredited investor exemption" means the prospectus exemption provided in subsection (1) in a jurisdiction other than Ontario and, in Ontario, subsection 73.3(2) of the *Securities Act* (Ontario). **,**

***(b) by replacing "***this section***" with "***the accredited investor exemption***" in each of subsections (2) and (4),***

***(c) by replacing "***This section***" with "***The accredited investor exemption***" in subsection (5), and***

***(d) by adding the following after subsection (5):***

(6) The accredited investor exemption does not apply to a distribution of a security to an individual unless the person distributing the security obtains from the individual a signed risk acknowledgement in the required form at the same time or before that individual signs the agreement to purchase the security.

(7) Subsection (6) does not apply to a distribution if the purchaser of the security is an accredited investor described in paragraph (j.1) of the definition of "accredited investor" in section 1.1 [*Definitions*].

(8) A person relying on the accredited investor exemption to distribute a security to an individual must retain the signed risk acknowledgement required in subsection (6) for 8 years after the distribution.

(9) Subsection (1) does not apply in Ontario. **.**

***7. Section 2.4 is amended***

***(a) by adding the following subsection:***

(2.1) The following persons are prescribed for purposes of subsection 73.4(2) of the *Securities Act* (Ontario):

(a) a director, officer, employee, founder or control person of the issuer,

(b) a director, officer or employee of an affiliate of the issuer,

(c) a spouse, parent, grandparent, brother, sister, child or grandchild of a director, executive officer, founder or control person of the issuer,

(d) a parent, grandparent, brother, sister, child or grandchild of the spouse of a director, executive officer, founder or control person of the issuer,

(e) a close personal friend of a director, executive officer, founder or control person of the issuer,

(f) a close business associate of a director, executive officer, founder or control person of the issuer,

(g) a spouse, parent, grandparent, brother, sister, child or grandchild of the selling security holder or of the selling security holder's spouse,

(h) a security holder of the issuer,

(i) an accredited investor,

(j) a person of which a majority of the voting securities are beneficially owned by, or a majority of the directors are, persons described in paragraphs (a) to (i),

(k) a trust or estate of which all of the beneficiaries or a majority of the trustees or executors are persons described in paragraphs (a) to (i), or

(l) a person that is not the public. **,**

***(b) by adding "***or, in Ontario, a distribution under subsection 73.4(2) of the *Securities Act* (Ontario)***" after "***a distribution under subsection (2)***" in subsection (3), and***

***(c) by adding the following after subsection (3):***

(4) Subsection (2) does not apply in Ontario. **.**

***8. Subsection 2.10(1) is replaced with the following:***

**2.10 (1)** The prospectus requirement does not apply to a distribution of a security to a person if all of the following apply

(a) that person is not an individual,

(b) that person purchases as principal,

(c) the security has an acquisition cost to that person of not less than $150 000 paid in cash at the time of the distribution, and

(d) the distribution is of a security of a single issuer. **.**

***9. Section 2.22 is amended by deleting "***and in Division 4 of Part 3 of this Instrument***", after "***In this Division***".***

***10. Part 3 is repealed.***

***11. Paragraph 6.1(1)(a) is amended by adding "***or, in Ontario, section 73.3 of the *Securities Act* (Ontario) [*Accredited investor*]***" after "***section 2.3 [*Accredited Investor*]***".***

***12. Subsection 6.2(2) is amended by replacing "***section 2.10 [*Minimum amount*] or section 2.19 [*Additional investment in investment funds*]***" with "***section 2.10 [*Minimum amount*] or section 2.19 [*Additional investment in investment funds*], or section 73.3 of the *Securities Act* (Ontario) [*Accredited investor*]***".***

***13. Subsection 6.4(1) is amended by deleting "***or section 3.9***".***

***14. Section 6.5 is amended***

***(a) by adding the following subsection:***

(0.1) The required form of risk acknowledgement under subsection 2.3(6) [*Accredited investor*] is Form 45-106F9. ***, and***

***(b) by deleting "***or section 3.6***" in subsection (2).***

***15. The title of section 6.6 is replaced with "***Use of information in Form 45-106F6 Schedule I – British Columbia***".***

***16. The Instrument is amended by adding the following section:***

**Exceptions to the requirement to file all or part of Form 45-106F6 – British Columbia**

**6.7 (1)** For the purposes of paragraph 6.3(1)(b), an investment fund or an underwriter distributing securities of an investment fund may file Form 45-106F1 instead of Form 45-106F6.

**(2)** For the purposes of paragraph 6.3(1)(b), a non-reporting issuer or an underwriter distributing securities of a non-reporting issuer may file Form 45-106F1 instead of Form 45-106F6 if both of the following apply:

(a) the issuer or underwriter states in item 2 of the Form 45-106F1 that it is relying on the exemption in subsection 6.7(2);

(b) the distribution in British Columbia was made only to a person that is a "permitted client" as defined in National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations.*

**(3)** An issuer or an underwriter is not required to provide the information in item 4 of Form 45-106F6, if all of the following apply:

(a) the issuer is a foreign public-issuer, a subsidiary of a foreign public-issuer or a subsidiary of a reporting issuer;

(b) in the case of an issuer that is a subsidiary of a foreign public-issuer or of a reporting issuer, all of the following apply:

(i) all of the subsidiary's outstanding voting securities are beneficially owned by the foreign public-issuer or reporting issuer, except those securities required by law to be owned by directors of the subsidiary;

(ii) the issuer or underwriter states the name of the foreign public-issuer or reporting issuer in item 2B of the Form 45-106F6;

(c) the issuer or underwriter states in item 2B of Form 45-106F6: "We are relying on the exception in subsection 6.7(3)".

**(4)** For purposes of subsection (3), "foreign public-issuer" means an issuer

(a) that has a class of securities registered under section 12 of the 1934 Act or is required to file reports under section 15(d) of the 1934 Act, or

(b) that is required to provide disclosure relating to the issuer and the trading in its securities to the public, to securityholders of the issuer or to a regulatory authority and that disclosure is publicly available in a foreign jurisdiction referred to in subsection (5).

**(5)** For purposes of subsection (4), the foreign jurisdictions are Australia, France, Germany, Hong Kong, Italy, Japan, Mexico, the Netherlands, New Zealand, Singapore, South Africa, Spain, Sweden, Switzerland or the United Kingdom of Great Britain and Northern Ireland. **.**

***17. Section 8.1.1 is repealed.***

***18. Section 8.3.1 is repealed.***

***19. Section 8.4 is amended by deleting "***or 3.2(5)***".***

***20. Section 8.5 is repealed.***

***21. The title to Appendix A is amended by deleting "***and Registration***".***

***22. The title to Appendix B is amended by deleting "***and Registration***".***

***23. Item 1 of Form 45-106F1 is amended by replacing "***address and telephone number***" with "***address, telephone number and email address***" wherever it appears.***

***24. Item 3 of Form 45-106F1 is replaced with the following:***

**Item 3:** Indicate the industry of the issuer by checking the appropriate box next to one of the industries listed below.

☐ Agriculture
☐ Biotechnology/Pharmaceuticals/Healthcare
☐ Capital Pool Companies
☐ Communications & Media
☐ Consumer Products & Merchandising
☐ Financial Services – banks & trusts
☐ Financial Services – insurance
☐ Financial Services – investment companies & funds
☐ Financial Services – mortgage investment companies
☐ Financial Services – private equity/venture capital
☐ Financial Services – securitization conduits
☐ Industrial Products
☐ Forestry
☐ Mining – exploration/development
☐ Mining – production
☐ Oil & Gas
☐ Pipelines
☐ Real Estate
☐ Real Estate Investment Trust
☐ Technology
☐ Transportation/Infrastructure
☐ Utilities/Power Generation
☐ Other (describe) _____

***25. Item 4 of Form 45-106F1 is amended by replacing "***Schedule I***" with "***Schedule 1***" wherever it appears.***

***26. Item 7 of Form 45-106F1 is amended***

***(a) by adding "***The information provided in this table must reconcile with the information provided in Schedule 1.***" immediately before the table, and***

***(b) by adding "***Canadian and foreign***" after "***Each***" in the top left hand box of the table.***

***27. Item 8 of Form 45-106 F1 is amended by replacing the table with the following:***

| Full name, address, telephone number and email address of the person being compensated | Indicate if person being compensated is an insider (I) of the issuer[1] or a registrant (R) | Compensation paid or to be paid (cash and/or securities) | | | | |
|---|---|---|---|---|---|---|
| | | | Securities | | | |
| | | Cash (Canadian $) | Number and type of securities issued | Price per security | Exemption relied on and date of distribution (yyyy-mm-dd) | Total dollar value of compensation (Canadian $) |
| | | | | | | |
| | | | | | | |
| | | | | | | |
| | | | | | | |

Note 1: If the issuer is an investment fund, indicate "A" for affiliate or associate if the person being compensated is the investment fund, the investment fund manager, an affiliate of the investment fund manager or a director, officer or employee of any of them. Also indicate "R" if the person is a registrant..

***28. Item 9 of Form 45-106F1 is replaced with the following:***

**Item 9:** If a distribution is made to one or more individuals in Ontario, include the attached "Authorization of Indirect Collection of Personal Information for Distributions in Ontario". The "Authorization of Indirect Collection of Personal Information for Distributions in Ontario" is only required to be filed with the Ontario Securities Commission.

**Certificate**

On behalf of the [issuer/underwriter], I certify that the statements made in this report are true.

Date: _____

_____
Name of [issuer/underwriter] (please print)

_____
Print name, title, telephone number and email address of person signing

_____
Signature

*Instruction*
*The person filing the form must complete the bracketed information by deleting the inappropriate word.* **.**

***29. Item 10 of NI 45-106F1 is amended by replacing "***title and telephone number***" with "***title, telephone number and email address***".***

***30. The part of NI 45-106F1 titled "***Authorization of Indirect Personal Information for Distributions in Ontario***" is amended***

***(a) by replacing "***Schedule I***" with "***Schedule 1***" wherever it appears,***

***(b) by*** **replacing "**contains***" with "***may contain***" in the first sentence,***

***(c) by adding "***and is an individual***" after "***in Ontario***" in the second sentence, and***

***(d) by deleting "***indirectly***" in paragraph (a)(ii).***

***31. The Schedule to Form 45-106F1 is replaced with the following:***

**Schedule 1**

Complete the following table. If distributions have been made to purchasers in multiple jurisdictions, list purchasers by jurisdiction.

For reports filed under sub-section 6.1(1)(j) [*TSX Venture Exchange offering*] of National Instrument 45-106 *Prospectus Exemptions* the following table only needs to list the total number of purchasers by jurisdiction instead of including the name, residential address and telephone number of each purchaser.

Do not include in this table securities issued as payment of commissions or finder's fees disclosed under item 8 of this report.

When identifying the exemption relied on, refer to the specific subsection of National Instrument 45-106 *Prospectus Exemptions*. For example, if relying on the exemption in section 2.10 [*Minimum Amount Investment*], the column should state "2.10(1)". For exemptions that require the purchaser to meet certain characteristics, such as the exemption in section 2.3 [*Accredited investor*] or section 2.5 [*Family, friends and business associates*], also state the specific paragraph that applies to the purchaser. If the purchaser qualifies under multiple paragraphs, state all paragraphs that apply. For example, when relying on section 2.3 [*Accredited investor*], if the purchaser qualifies under paragraph (j) of the definition of accredited investor in section 1.1, the column must show "2.3(1) – (j)". If the purchaser qualifies under both paragraphs (j) and (k), the column must show "2.3(1) – (j), (k)".

It is not necessary to list the exemption, if any, relied on in the *Securities Act* (Ontario) that provides a similar exemption to that provided in National Instrument 45-106 *Prospectus Exemptions*. For example, if an issuer relies on the accredited investor exemption in section 73.3(2) under the *Securities Act* (Ontario) for a distribution in Ontario, it can identify the exemption relied on in the table as the accredited investor exemption in section 2.3(1) of National Instrument 45-106 *Prospectus Exemptions.*

**The information in this schedule will not be placed on the public file of any securities regulatory authority or, where applicable, regulator.** However, freedom of information legislation in certain jurisdictions may require the securities regulatory authority or, where applicable, regulator to make this information available if requested.

| Full name, residential address, telephone number and email address of purchaser | Indicate if the purchaser is an insider (I) of the issuer or a registrant (R) [1] | Number and type of securities purchased | Total purchase price (Canadian $) | Exemption relied on (list the specific subsection and paragraph(s) of National Instrument 45-106 *Prospectus Exemptions*) | Date of distribution (yyyy-mm-dd) | Full name of any person compensated for the distribution to this purchaser[2] |
|---|---|---|---|---|---|---|
| | | | | | | |

Note 1: If the issuer is an investment fund, the issuer is not required to complete this column.

Note 2: The name of the person compensated must reconcile with the information provided in item 8 of this report.

**Instructions:**

1. References to a purchaser in this report are to the beneficial owner of the securities. If a trust company or a registered adviser has purchased on behalf of a fully managed account

under subsections 2.3(2) and (4) of National Instrument 45-106 *Prospectus Exemptions*, give information about both the trust company or registered adviser and the beneficial owner of the fully managed account.

2. Except in British Columbia, file this report and the applicable fee in each jurisdiction in which a distribution is made at the addresses listed at the end of this report. If the distribution is made in more than one jurisdiction, the issuer/underwriter must complete a single report identifying all purchasers and file that report in each of the jurisdictions in which the distribution is made. Filing fees associated with the filing of the report are not affected by identifying all purchasers in a single report.

2.1 In British Columbia, file Form 45-106F6 and pay the applicable fee. If the distribution is made in British Columbia and one or more other jurisdictions, file Form 45-106F6 in British Columbia and file this form, following instruction 2, in the other applicable jurisdictions.

2.2 A "distribution" includes distributions made to purchasers resident in the local jurisdiction. In most Canadian jurisdictions, a "distribution" also occurs if the issuer of the securities is located in the jurisdiction. Consult securities legislation in the particular jurisdiction for guidance on when an issuer is considered to be located in that jurisdiction.

For example, a distribution by an issuer whose head office is located in Alberta to a purchaser resident in Saskatchewan is a distribution in both Alberta and Saskatchewan, requiring the issuer to file Form 45-106F1 with both the Alberta Securities Commission and the Financial and Consumer Affairs Authority (Saskatchewan).

3. If the space provided for any answer is insufficient, please adjust the table to include additional space.

4. One report may be used for multiple distributions occurring within 10 days of each other provided that the report is filed on or before the 10th day following the first of such distributions.

5. The information in items 5, 6, and 7 must reconcile with the information in Schedule 1 of Form 45-106F1. All dollar amounts must be in Canadian dollars.

6. In order to determine the applicable fee, consult the securities legislation of each jurisdiction in which a distribution is made.

7. This report must be filed in English or in French. In Québec, the issuer/underwriter must comply with linguistic obligations and rights prescribed by Québec law.

## Securities Regulatory Authorities and Regulators

**Alberta Securities Commission**
Suite 600, 250–5th St. SW
Calgary, Alberta T2P 0R4
Telephone: 403-297-6454
Facsimile: 403-297-6156

**Financial and Consumer Affairs Authority (Saskatchewan)**
Suite 601 - 1919 Saskatchewan Drive
Regina, Saskatchewan S4P 4H2
Telephone: 306-787-5879
Facsimile: 306-787-5899

**The Manitoba Securities Commission**
500 – 400 St Mary Avenue
Winnipeg, Manitoba R3C 4K5
Telephone: 204-945-2548
Toll free in Manitoba 1-800-655-5244
Facsimile: 204-945-0330

**Ontario Securities Commission**
20 Queen Street West
22nd Floor
Toronto, Ontario M5H 3S8
Telephone: 416-593-8314
Toll free in Canada: 1-877-785-1555
Facsimile: 416-593-8122
Public official contact regarding indirect collection of information:
Inquiries Officer

**Autorité des marchés financiers**
800, square Victoria, 22e étage
C.P. 246, tour de la Bourse
Montréal, Québec H4Z 1G3
Telephone: 514-395-0337
Or 1-877-525-0337
Facsimile: 514-873-6155 (For filing purposes only)
Facsimile: 514-864-6381 (For privacy requests only)

**Financial and Consumer Services Commission (New Brunswick)**
85 Charlotte Street, Suite 300
Saint John, New Brunswick E2L 2J2
Telephone: 506-658-3060
Toll Free in New Brunswick 1-866-933-2222
Facsimile: 506-658-3059

**Nova Scotia Securities Commission**
Suite 400, 5251 Duke Street
Halifax, Nova Scotia B3J 1P3
Telephone: 902-424-7768
Facsimile: 902-424-4625

**Prince Edward Island Securities Office**
95 Rochford Street, 4th Floor Shaw Building
P.O. Box 2000
Charlottetown, Prince Edward Island C1A 7N8
Telephone: 902-368-4569
Facsimile: 902-368-5283

**Government of Newfoundland and Labrador**
Financial Services Regulation Division
P.O. Box 8700
Confederation Building
2nd Floor, West Block
Prince Philip Drive
St. John's, NFLD A1B 4J6
Attention: Director of Securities
Telephone: 709-729-4189
Facsimile: 709-729-6187

**Office of the Yukon Superintendent of Securities**
Government of Yukon
Department of Community Services
307 Black Street, 1st Floor
PO Box 2703 (C-6)
Whitehorse, YT Y1A 2C6
Telephone: 867-667-5466
Facsimile: 867-393-6251

**Government of Northwest Territories**
Office of the Superintendent of Securities
P.O. Box 1320
Yellowknife, NT X1A 2L9
Attention: Deputy Superintendent, Legal & Enforcement
Telephone: 867-920-8984
Facsimile: 867-873-0243

**Government of Nunavut**
Department of Justice
Legal Registries Division
P.O. Box 1000, Station 570
1st Floor, Brown Building
Iqaluit, Nunavut X0A 0H0
Telephone: 867-975-6590
Facsimile: 867-975-6594**.**

***32. Item 3 of Form 45-106F6 is replaced with the following:***

**Item 3: Issuer's industry**

Indicate the industry of the issuer by checking the appropriate box below.

☐ Agriculture
☐ Biotechnology/Pharmaceuticals/Healthcare
☐ Capital Pool Companies
☐ Communications & Media
☐ Consumer Products & Merchandising
☐ Financial Services – banks & trusts
☐ Financial Services – insurance
☐ Financial Services – investment companies & funds
☐ Financial Services – mortgage investment companies
☐ Financial Services – private equity/venture capital
☐ Financial Services – securitization conduits
☐ Industrial Products **.**
☐ Forestry
☐ Mining – exploration/development
☐ Mining – production
☐ Oil & Gas
☐ Pipelines
☐ Real Estate
☐ Real Estate Investment Trust
☐ Technology
☐ Transportation/Infrastructure
☐ Utilities/Power Generation
☐ Other (describe) _____

***33. Item 4 of Form 45-106F6 is amended***

***(a) by replacing "***insider***" in the first sentence of the second paragraph with "***director, executive officer, control person***",***

***(b) by replacing "***insider***" in each instance in the second sentence with "***control person***", and***

***(c) by adding "***, province or state***" after "***municipality***" in the top left hand box of the table.***

***34. Item 7 of Form 45-106F6 is amended by replacing the table and Note 1 with the following:***

| Each Canadian and foreign jurisdiction where purchasers reside | Number of purchasers[1] | Price per security (Canadian $)[2] | Total dollar value raised from purchasers in the jurisdiction (Canadian $) |
|---|---|---|---|
| | | | |
| | | | |
| Total number of Purchasers | | | |
| Total dollar value of distribution in all jurisdictions (Canadian $) | | | |

Note 1: If more than one exemption is relied on in the same jurisdiction, state the number of purchasers in that jurisdiction using each exemption.
Note 2: If securities are issued at different prices, list the highest and lowest price for which the securities were sold**.**

***35. Item 8 of Form 45-106F6 is amended by replacing clause C and the table following clause C with the following:***

C. When identifying the exemption relied on, refer to the specific subsection of National Instrument 45-106 *Prospectus Exemptions*. For example, if relying on the exemption in section 2.10 [*Minimum Amount Investment*], the column should state "2.10(1)". For exemptions that require the purchaser to meet certain characteristics, such as the exemption in section 2.3 [*Accredited investor*] or section 2.5 [*Family, friends and business associates*], also state the specific paragraph that applies to the purchaser. If the purchaser qualifies under multiple paragraphs, state all paragraphs that apply. For example, when relying on section 2.3 [*Accredited investor*], if the purchaser qualifies under paragraph (j) of the definition of accredited investor in section 1.1, the column must show "2.3(1) – (j)". If the purchaser qualifies under both paragraphs (j) and (k), the column must show "2.3(1) – (j), (k)".

D. An issuer or underwriter completing this table in connection with a distribution using the exemption in subparagraph 6.1(1)(j) [*TSX Venture Exchange offering*] of National Instrument 45-106 *Prospectus Exemptions* may choose to replace the information in the first column with the total number of purchasers, whether individuals or not, by jurisdiction. If the issuer or underwriter chooses to do so, then the issuer or underwriter is not required to complete the second column or the tables in Schedules I and II.

| Information about non-individual purchasers | | | | | | |
|---|---|---|---|---|---|---|
| Full name and address of purchaser and name, telephone number and email address of a contact person | Indicate if the purchaser is an insider (I) of the issuer or a registrant (R) | Number and type of securities purchased | Total purchase price (Canadian $) | Exemption relied on (specific subsection and paragraph) | Date of distribution (yyyy-mm-dd) | Full name of any person compensated for the distribution to this purchaser[1] |
| | | | | | | |
| | | | | | | |

Note 1: The name of the person compensated must reconcile with the information provided in item 9 of this report..

***36. Item 9 of Form 45-106F6 is amended by replacing the table with the following:***

| Full name, address, telephone number and email address of the person being compensated | Indicate if the person being compensated is an insider (I) of the issuer[1] or a registrant (R) | Compensation paid or to be paid (cash and/or securities) | | | | |
|---|---|---|---|---|---|---|
| | | Cash (Canadian $) | Securities | | | Total dollar value of compensation (Canadian $) |
| | | | Number and type of securities issued | Price per security (Canadian $) | Exemption relied on and date of distribution (yyyy-mm-dd) | |
| | | | | | | |
| | | | | | | |
| | | | | | | |
| | | | | | | |

**Note 1:** If the issuer is an investment fund, indicate "A" for affiliate or associate if the person being compensated is the investment fund, the investment fund manager, an affiliate of the investment fund manager or a director, officer or employee of any of them. Also indicate "R" if the person is a registrant..

***37. The section titled "***Certificate***" is amended by replacing "***title and telephone number***" with "***title, telephone number and email address***".***

***38. Item 10 of Form 45-106F6 is amended by replacing "***title and telephone number***" with "***title, telephone number and email address***".***

***39. Schedule I to Form 45-106F6 is amended by replacing the table with the following:***

| **Public information about purchasers who are individuals** | | | | | |
|---|---|---|---|---|---|
| *Unless exempted by the British Columbia Securities Commission, a person must not, directly or indirectly, use the information in this table, in whole or in part, for any purpose other than research concerning the issuer for the person's own investment purpose.* | | | | | |
| Full name of purchaser | Indicate if the purchaser is an insider (I) of the issuer or a registrant (R) | Number and type of securities purchased | Total purchase price (Canadian $) | Date of distribution (yyyy-mm-dd) | Full name of any person compensated for the distribution to this purchaser[1] |
| | | | | | |

Note 1: The name of the person compensated must reconcile with the information provided in item 9 of this report.**.**

***40. Schedule II to Form 45-106F6 is replaced with the following:***

**Schedule II**
**Confidential information about purchasers who are individuals**

A. Complete the following table for each purchaser who is an individual. The information in this table must reconcile with the table in Schedule I.

B. When identifying the exemption relied on, refer to the specific subsection of National Instrument 45-106 *Prospectus Exemptions*. For example, if relying on the exemption in section 2.10 [*Minimum Amount Investment*], the column should state "2.10(1)". For exemptions that require the purchaser to meet certain characteristics, such as the exemption in section 2.3 [*Accredited investor*] or section 2.5 [*Family, friends and business associates*], also state the specific paragraph that applies to the purchaser. If the purchaser qualifies under multiple paragraphs, state all paragraphs that apply. For example, when relying on section 2.3 [*Accredited investor*], if the purchaser qualifies under paragraph (j) of the definition of accredited investor in section 1.1, the column must show "2.3(1) – (j)". If the purchaser qualifies under both paragraphs (j) and (k), the column must show "2.3(1) – (j), (k)".

C. The information in the following table will not be placed on the public file of the British Columbia Securities Commission.

| Confidential information about purchasers who are individuals | |
|---|---|
| Full name, residential address, telephone number and email address of purchaser | Exemption relied on (specific subsection and paragraph) |
| | |
| | |

***41. Guidance for completing and filing Form 45-16F6 is amended by replacing with the following:***

**Guidance for completing and filing Form 45-106F6**

1. **Required form in British Columbia -** In British Columbia, file this report and the applicable fee using BCSC e-services in accordance with British Columbia Instrument 13-502 Electronic filing of reports of exempt distribution. If the distribution occurs in British Columbia and one or more other jurisdictions, the issuer is required to file this report in British Columbia and file Form 45-106F1 in the other applicable jurisdictions.

2. **What is a distribution? -** In British Columbia, "distribution" includes distributions made from British Columbia to purchasers resident in other Canadian or foreign jurisdictions if the issuer has a significant connection to British Columbia. If the issuer has a significant connection to British Columbia, complete the tables in item 8 and Schedules I and II for all purchasers. BC Interpretation Note 72-702 *Distribution of Securities to Persons Outside British Columbia* provides guidance on when an issuer has a significant connection to British Columbia.

   In British Columbia, "distribution" also includes distributions made from another Canadian or foreign jurisdiction to purchasers resident in British Columbia. If the issuer is from another Canadian or foreign jurisdiction, complete the tables in item 8, item 9 and Schedules I and II only for purchasers resident in British Columbia.

3. **What is a purchaser? -** References to a purchaser in this report are to the beneficial owner of the securities. If a trust company or a registered adviser has purchased on behalf of a fully managed account under subsections 2.3(2) and (4) of National Instrument 45-106 *Prospectus Exemptions*, give information about both the trust company or registered adviser and the beneficial owner of the fully managed account.

4. **What is an individual? –** Individual is defined in securities legislation to mean a natural person. A corporation, partnership, party, trust, fund, association, and any other organized group of persons is not an individual.

5. If a purchaser refuses to provide their telephone number or email address, then indicate "not provided" in the applicable table.

6. **Space in tables -** If the space provided in any table in this Form is insufficient, please adjust the table to include additional space.

7. **Multiple distributions -** One report may be used for multiple distributions occurring within 10 days of each other if the report is filed on or before the 10th day following the first of such distributions.

8. **Fees -** In order to determine the applicable fee, consult Fee Checklist British Columbia Form 11-901F (item # 16)**.**

***42. The Instrument is amended by adding the following form after Form 45-106F6:***

**Form 45-106F9** ***Risk Acknowledgement Form for Individual Accredited Investors***

# WARNING TO INVESTORS

**TO BE COMPLETED BY THE PURCHASER:**

| **1. Acknowledgement of risk** |
|---|
| **I acknowledge that this is a risky investment. I could lose all of the $_____** *[insert amount being invested, including any amounts you have agreed to pay in the future]* **I invest.**<br><br>**I understand that I may never be able to sell these securities and I may not be provided with any ongoing information from the issuer I invest in.** *[Instruction: Delete if issuer is a reporting issuer.]*<br><br>**I acknowledge that, because I am purchasing this investment under the accredited investor prospectus exemption, I will not have the benefit of certain protections under securities law, including detailed disclosure about the investment.** |
| **First and last name** (please print): |
| **Signature:** |
| **Date:** |

| **2. How I qualify to buy these securities** | |
|---|---|
| I confirm that I am an accredited investor because I satisfy at least one of the following tests (initial all that apply): | Purchaser's initials |
| Either alone or with my spouse, I own cash and securities worth more than $1 million, less any related debt. | |
| My net income before taxes was more than $200,000 in each of the 2 most recent calendar years and I expect it to exceed $200,000 in this calendar year. (The amount of net income can be found in your personal income tax form.) | |
| My net income before taxes combined with my spouse's was more than $300,000 in each of the 2 most recent calendar years and I expect our combined net income to exceed $300,000 in this calendar year. (The amount of net income can be found in your personal income tax form.) | |
| Either alone or with my spouse, I own net assets (being my total assets, including real estate, less my total debt) worth more than $5 million. | |

| **3. What I am buying** |
|---|
| Number and type of securities: |
| Name of issuer: |
| I understand that $_____ of my total investment is being paid to the salesperson as a fee or commission. |
| Initial by the purchaser: |

**TO BE COMPLETED BY THE ISSUER OR SELLING SECURITY HOLDER:** *[Instruction: The issuer/selling securityholder must complete this section before delivering this form to the purchaser. If the issuer is an investment fund, the issuer must provide the name of the investment fund, the name and address of the investment fund manager and the name and phone number of a contact person for the investment fund manager.]*

| **4. How to contact the issuer/selling securityholder** |
|---|
| **Name and address of issuer/selling securityholder:** |
| **First and last name of contact person:** |
| **Phone number:** |
| **Email address:** |

**TO BE COMPLETED BY THE PERSON INVOLVED IN THE SALE OF THE SECURITIES:** *[Instruction: Before providing this document to a salesperson, the issuer/selling securityholder must remove the appropriate box to reflect whether the issuer is an investment fund or not. Any person involved in meeting with the purchaser or providing information to the purchaser must complete this section by answering "yes" or "no" and filling in their contact information before delivering this form to the purchaser.]*

| **5. Who is selling these securities?** | **Yes/No** |
|---|---|
| **I am registered with _____ (insert name of registered firm).*** | |
| *[Instruction: Delete if issuer is an investment fund.]* **I am a director, officer or employee of the issuer.** | |
| *[Instruction: Delete if issuer is not an investment fund.]* **I am a director, officer or employee of the investment fund, of the investment fund manager or of an affiliate of the investment fund manager.** | |
| **I am not registered with a securities regulator and generally not qualified to provide investment advice.** | |
| **First and last name** (please print)**:** | |
| **Signature:** | |
| **Date:** | |
| **Phone number:** | |
| **Email address:** | |

***Persons in the business of selling securities or offering investment advice are generally required to be registered with their provincial or territorial securities regulatory authority, unless they have an exemption. A purchaser can check the seller's registration status and history at the following website: www.aretheyregistered.ca.***

***Form Instructions:***

1. *This form must be presented to purchasers on one double-sided page. The cover page must contain purchaser boxes 1, 2 and 3. The back page must contain issuer/selling securityholder box 4 and salesperson box 5.*

2. *The purchaser, issuer and salesperson (if any) must sign 2 copies of this form. Each of the purchaser and the issuer must receive a signed copy of this form. The issuer is required to keep a copy of this form for 8 years after the distribution. If a salesperson has signed this form, the salesperson may choose to keep a copy for their records. The salesperson must ensure that the purchaser and the issuer receive originally signed copies.***.**

***43. This Instrument comes into force on •.***

**Form 45-106F1**
***Report of Exempt Distribution***

Except in British Columbia, this is the form required under section 6.1 of National Instrument 45-106 for a report of exempt distribution. In British Columbia, the required form is Form 45-106F6.

## Issuer/underwriter information

**Item 1:** State the full name of the issuer of the security distributed and the address ~~and,~~ telephone number and email address of its head office. If the issuer of the security distributed is an investment fund, state the name of the fund as the issuer, and provide the full name of the manager of the investment fund and the address ~~and,~~ telephone number and email address of the head office of the manager. Include the former name of the issuer if its name has changed since last report. If an underwriter is completing this form, also state the full name of the underwriter and the address ~~and,~~ telephone number and email address of the head office of the underwriter.

**Item 2:** State whether the issuer is or is not a reporting issuer and, if reporting, each of the jurisdictions in which it is reporting.

**Item 3:** Indicate the industry of the issuer by checking the appropriate box next to one of the industries listed below.

~~Bio-tech~~ ~~Mining~~
~~Financial Services~~ ~~exploration/development~~
~~investment companies and funds~~ ~~production~~
~~mortgage investment companies~~ ~~Oil and gas~~
~~Forestry~~ ~~Real estate~~
~~Hi-tech~~ ~~Utilities~~
~~Industrial~~ ~~Other (describe)~~

☐ Agriculture
☐ Biotechnology/Pharmaceuticals/Healthcare
☐ Capital Pool Companies
☐ Communications & Media
☐ Consumer Products & Merchandising
☐ Financial Services – banks & trusts
☐ Financial Services – insurance
☐ Financial Services – investment companies & funds
☐ Financial Services – mortgage investment companies
☐ Financial Services – private equity/venture capital
☐ Forestry
☐ Mining – exploration/development
☐ Mining – production
☐ Oil & Gas
☐ Pipelines
☐ Real Estate
☐ Real Estate Investment Trust
☐ Technology
☐ Transportation/Infrastructure
☐ Utilities/Power Generation

☐ Financial Services – securitization conduits ☐ Other (describe) _____

☐ Industrial Products

**Details of distribution**

**Item 4:** Complete Schedule ~~I~~1 to this report. Schedule ~~I~~1 is designed to assist in completing the remainder of this report.

**Item 5:** State the distribution date. If the report is being filed for securities distributed on more than one distribution date, state all distribution dates.

**Item 6:** For each security distributed:

(a) describe the type of security,

(b) state the total number of securities distributed. If the security is convertible or exchangeable, describe the type of underlying security, the terms of exercise or conversion and any expiry date; and

(c) state the exemption(s) relied on.

**Item 7:** Complete the following table for each Canadian and foreign jurisdiction where purchasers of the securities reside. Do not include in this table, securities issued as payment for commissions or finder's fees disclosed under item 8, below. The information provided in this table must reconcile with the information provided in Schedule 1.

| Each Canadian and foreign jurisdiction where purchasers reside | Number of purchasers | Price per security (Canadian $)[1] | Total dollar value raised from purchasers in the jurisdiction (Canadian $) |
|---|---|---|---|
| | | | |
| | | | |
| **Total number of Purchasers** | | | |
| **Total dollar value of distribution in all jurisdictions (Canadian $)** | | | |

**Note 1:** If securities are issued at different prices list the highest and lowest price the securities were sold for.

**Commissions and finder's fees**

**Item 8:** Complete the following table by providing information for each person who has received or will receive compensation in connection with the distribution(s). Compensation includes commissions, discounts or other fees or payments of a similar nature. Do not include payments for services incidental to the distribution, such as clerical, printing, legal or accounting services.

If the securities being issued as compensation are or include convertible securities, such as warrants or options, please add a footnote describing the terms of the convertible securities, including the term and exercise price. Do not include the exercise price of any convertible security in the total dollar value of the compensation unless the securities have been converted.

| Full name, address, telephone number and email address of the person being compensated | Indicate if person being compensated is an insider (I) of the issuer[1] or a registrant (R) | Compensation paid or to be paid (cash and/or securities) | | | | |
|---|---|---|---|---|---|---|
| | | Cash (Canadian $) | Securities | | | Total dollar value of compensation (Canadian $) |
| | | | Number and type of securities issued | Price per security | Exemption relied on and date of distribution (yyyy-mm-dd) | |
| | | | | | | |
| | | | | | | |
| | | | | | | |
| | | | | | | |

**Note 1:** If the issuer is an investment fund, indicate "A" for affiliate or associate if the person being compensated is the investment fund, the investment fund manager, an affiliate of the investment fund manager or a director, officer or employee of any of them. Also indicate "R" if the person is a registrant.

**Item 9:** If a distribution is made to one or more individuals in Ontario, ~~please~~ include the attached ""Authorization of Indirect Collection of Personal Information for Distributions in Ontario"". The ""Authorization of Indirect Collection of Personal Information for Distributions in Ontario"" is only required to be filed with the Ontario Securities Commission.

**Certificate**

On behalf of the [issuer/underwriter], I certify that the statements made in this report are true.

Date: _____

_____

Name of [issuer/underwriter] (please print)

_____

Print name, title ~~and~~, telephone number and email address of person signing

_____

Signature

*Instruction*
*The person filing the form must complete the bracketed information by deleting the inappropriate word.*

**Item 10:** State the name, title ~~and~~, telephone number and email address of the person who may be contacted with respect to any questions regarding the contents of this report, if different than the person signing the certificate.

**IT IS AN OFFENCE TO MAKE A MISREPRESENTATION IN THIS REPORT.**

**Notice - Collection and use of personal information**

The personal information required under this form is collected on behalf of and used by the securities regulatory authorities or, where applicable, the regulators under the authority granted in securities legislation for the purposes of the administration and enforcement of the securities legislation.

If you have any questions about the collection and use of this information, contact the securities regulatory authority or, where applicable, the regulator in the jurisdiction(s) where the form is filed, at the address(es) listed at the end of this report.

**Authorization of Indirect Collection of Personal Information for Distributions in Ontario**

The attached Schedule ~~I contains~~1 may contain personal information of purchasers and details of the distribution(s). The issuer/underwriter hereby confirms that each purchaser listed in Schedule ~~I~~1 of this report who is resident in Ontario and is an individual

(a) has been notified by the issuer/underwriter

(i) of the delivery to the Ontario Securities Commission of the information pertaining to the person as set out in Schedule ~~I~~,1,

(ii) that this information is being collected ~~indirectly~~ by the Ontario Securities Commission under the authority granted to it in securities legislation,

(iii) that this information is being collected for the purposes of the administration and enforcement of the securities legislation of Ontario, and

(iv) of the title, business address and business telephone number of the public official in Ontario, as set out in this report, who can answer questions about the Ontario Securities Commission's indirect collection of the information, and

(b) has authorized the indirect collection of the information by the Ontario Securities Commission.

**Schedule ~~I~~1**

Complete the following table. If distributions have been made to purchasers in multiple jurisdictions, list purchasers by jurisdiction.

For reports filed under sub-section 6.1(1)(j) ~~(~~[*TSX Venture Exchange offering*~~)~~] of National Instrument 45-106 *Prospectus Exemptions* the following table only needs to list the total number of purchasers by jurisdiction instead of including the name, residential address and telephone number of each purchaser.

Do not include in this table~~,~~ securities issued as payment of commissions or finder's fees disclosed under item 8 of this report.

When identifying the exemption relied on, refer to the specific subsection of National Instrument 45-106 *Prospectus Exemptions*. For example, if relying on the exemption in section 2.10 [*Minimum Amount Investment*], the column should state "2.10(1)". For exemptions that require the purchaser to meet certain characteristics, such as the exemption in section 2.3 [*Accredited investor*] or section 2.5 [*Family, friends and business associates*], also state the specific paragraph that applies to the purchaser. If the purchaser qualifies under multiple paragraphs, state all paragraphs that apply. For example, when relying on section 2.3 [*Accredited investor*], if the purchaser qualifies under paragraph (j) of the definition of accredited investor in section 1.1, the column must show "2.3(1) – (j)". If the purchaser qualifies under both paragraphs (j) and (k), the column must show "2.3(1) – (j), (k)".

It is not necessary to list the exemption, if any, relied on in the *Securities Act* (Ontario) that provides a similar exemption to that provided in National Instrument 45-106 *Prospectus Exemptions*. For example, if an issuer relies on the accredited investor exemption in section 73.3(2) under the *Securities Act* (Ontario) for a distribution in Ontario, it can identify the exemption relied on in the table as the accredited investor exemption in section 2.3(1) of National Instrument 45-106 *Prospectus Exemptions.*

**The information in this schedule will not be placed on the public file of any securities regulatory authority or, where applicable, regulator.** However, freedom of information legislation in certain jurisdictions may require the securities regulatory authority or, where applicable, regulator to make this information available if requested.

| Full name, residential address ~~and~~, telephone number and email address of purchaser | Indicate if the purchaser is an insider (I) of the issuer or a registrant (R)[1] | Number and type of securities purchased | Total purchase price (Canadian $) | Exemption relied on (list the specific subsection and paragraph(s) of National Instrument 45-106 *Prospectus Exemptions*) | Date of distribution (yyyy-mm-dd) | Full name of any person compensated for the distribution to this purchaser[2] |
|---|---|---|---|---|---|---|
| | | | | | | |
| | | | | | | |

Note 1: If the issuer is an investment fund, the issuer is not required to complete this column.

Note 2: The name of the person compensated must reconcile with the information provided in item 8 of this report.

**Instructions:**

1. References to a purchaser in this report are to the beneficial owner of the securities. If a trust company or a registered adviser has purchased on behalf of a fully managed account under subsections 2.3(2) and (4) of National Instrument 45-106 *Prospectus Exemptions*, give information about both the trust company or registered adviser and the beneficial owner of the fully managed account.

2. Except in British Columbia, file this report and the applicable fee in each jurisdiction in which a distribution is made at the addresses listed at the end of this report. If the distribution is made in more than one jurisdiction, the issuer/underwriter must complete a single report identifying all purchasers and file that report in each of the jurisdictions in which the distribution is made. Filing fees associated with the filing of the report are not affected by identifying all purchasers in a single report.

2.1 In British Columbia, file Form 45-106F6 and pay the applicable fee. If the distribution is made in British Columbia and one or more other jurisdictions, file Form 45-106F6 in British Columbia and file this form, following instruction 2, in the other applicable jurisdictions.

2.2 A "distribution" includes distributions made to purchasers resident in the local jurisdiction. In most Canadian jurisdictions, a "distribution" also occurs if the issuer of the securities is located in the jurisdiction. Consult securities legislation in the particular jurisdiction for guidance on when an issuer is considered to be located in that jurisdiction.

For example, a distribution by an issuer whose head office is located in Alberta to a purchaser resident in Saskatchewan is a distribution in both Alberta and Saskatchewan, requiring the issuer to file Form 45-106F1 with both the Alberta Securities Commission and the Financial and Consumer Affairs Authority (Saskatchewan).

3. If the space provided for any answer is insufficient, ~~additional sheets may be used and must be cross-referenced to the relevant part and properly identified and signed by the person whose signature appears on the report~~please adjust the table to include additional space.

4. One report may be used for multiple distributions occurring within 10 days of each other provided that the report is filed on or before the 10th day following the first of such distributions.

5. The information in items 5, 6, and 7 must reconcile with the information in Schedule ~~I~~1 of Form 45-106F1. All dollar amounts must be in Canadian dollars.

6. In order to determine the applicable fee, consult the securities legislation of each jurisdiction in which a distribution is made.

7. This report must be filed in English or in French. In Québec, the issuer/underwriter must comply with linguistic obligations and rights prescribed by Québec law.

## Securities Regulatory Authorities and Regulators

**Alberta Securities Commission**
Suite 600, 250–5th St. SW
Calgary, Alberta T2P 0R4
Telephone: ~~(~~403~~)~~ -297-6454
Facsimile: ~~(~~403~~)~~ -297-6156

**Financial and Consumer Affairs Authority (Saskatchewan ~~Financial Services Commission~~)**
Suite 601 - 1919 Saskatchewan Drive
Regina, Saskatchewan S4P 4H2
Telephone: ~~(~~306~~)~~ -787-5879
Facsimile: ~~(~~306~~)~~ -787-5899

**The Manitoba Securities Commission**
500 – 400 St Mary Avenue
Winnipeg, Manitoba R3C 4K5
Telephone: ~~(~~204~~)~~ -945-2548
Toll free in Manitoba 1-800-655-5244
Facsimile: ~~(~~204~~)~~ -945-0330

**Ontario Securities Commission**
~~Suite 1903, Box 55~~
20 Queen Street West
22nd Floor
Toronto, Ontario M5H 3S8
Telephone: ~~(~~416~~)~~ -593- 8314
Toll free in Canada: 1-877-785-1555
Facsimile: ~~(~~416~~)~~ -593-8122
Public official contact regarding indirect collection of information:
~~Administrative Support Clerk~~
~~Telephone (416) 593-3684~~
Inquiries Officer

**Autorité des marchés financiers**
800, ~~Square~~square Victoria, 22e étage
C.P. 246, ~~Tour~~tour de la Bourse
Montréal, Québec H4Z 1G3
Telephone: ~~(~~514~~)~~ -395-0337
Or 1-877-525-0337
Facsimile: ~~(~~514~~)~~ -873-6155 (For filing purposes only)
Facsimile: ~~(~~514~~)~~ -864-6381 (For privacy requests only)

**Financial and Consumer Services Commission (New Brunswick ~~Securities Commission~~)**
85 Charlotte Street, Suite 300
Saint John, New Brunswick E2L 2J2
Telephone: ~~(~~506~~)~~ -658-3060
Toll Free in New Brunswick 1-866-933-2222
Facsimile: ~~(~~506~~)~~ -658-3059

**Nova Scotia Securities Commission**
~~2nd Floor, Joseph Howe Building~~
~~1690 Hollis~~Suite 400, 5251 Duke Street
Halifax, Nova Scotia B3J 1P3~~J9~~
Telephone: ~~(~~902~~)~~ -424-7768
Facsimile: ~~(~~902~~)~~- 424-4625

**Prince Edward Island Securities Office**
95 Rochford Street, 4th Floor Shaw Building
P.O. Box 2000
Charlottetown, Prince Edward Island C1A 7N8
Telephone: ~~(~~902~~)~~ -368-4569
Facsimile: ~~(~~902~~)~~ -368-5283

**Government of Newfoundland and Labrador**
Financial Services Regulation Division
P.O. Box 8700
Confederation Building
2nd Floor, West Block
Prince Philip Drive
St. John's, NFLD A1B 4J6
Attention: Director of Securities
Telephone: ~~(~~709~~)~~ -729-4189
Facsimile: ~~(~~709~~)~~ -729-6187

**~~Government~~Office of the Yukon Superintendent of Securities**
**Government of Yukon**
Department of Community Services
~~Law Centre, 3rd~~307 Black Street, 1st Floor
~~2130 Second Avenue~~
PO Box 2703 (C-6)
Whitehorse, YT Y1A ~~5H~~2C6
Telephone: ~~(~~867~~)~~ -667-~~5314~~5466
Facsimile: ~~(~~867~~)~~ -393-6251

**Government of Northwest Territories**
~~Government of the Northwest Territories~~
Office of the Superintendent of Securities
P.O. Box 1320
Yellowknife, NT X1A 2L9
Attention: Deputy Superintendent, Legal & Enforcement
Telephone: ~~(~~867~~)~~ ~~-~~-920-8984
Facsimile: ~~(~~867~~)~~ ~~-~~-873-0243

**Government of Nunavut**
Department of Justice
Legal Registries Division
P.O. Box 1000, Station 570
1st Floor, Brown Building
Iqaluit, Nunavut X0A 0H0
Telephone: ~~(~~867~~)~~ ~~-~~-975-6590
Facsimile: ~~(~~867~~)~~ ~~-~~-975-6594

**Form 45-106F6**

***British Columbia Report of Exempt Distribution***

This is the form required under section 6.1 of National Instrument 45-106 for a report of exempt distribution in British Columbia.

**Issuer/underwriter information**

**Item 1: Issuer/underwriter name and contact information**

A. State the following:

- the full name of the issuer of the security distributed. Include the former name of the issuer if its name has changed since this report was last filed;
- the issuer's website address; and
- the address, telephone number and email address of the issuer's head office.

B. If an underwriter is completing this report, state the following:

- the full name of the underwriter;
- the underwriter's website address; and
- the address, telephone number and email address of the underwriter's head office.

**Item 2: Reporting issuer status**

A. State whether the issuer is or is not a reporting issuer and, if reporting, each of the jurisdictions in which it is reporting.

B. If the issuer is an investment fund managed by an investment fund manager registered in a jurisdiction of Canada, name the investment fund manager and state the jurisdiction(s) where it is registered.

**Item 3: Issuer's industry**

Indicate the industry of the issuer by checking the appropriate box below.

~~Bio-tech~~ ~~Mining~~

~~Financial Services~~ ~~exploration/development~~

~~investment companies and funds~~ ~~production~~

~~mortgage investment companies~~ ~~Oil and gas~~

~~Forestry~~ ~~Real estate~~

~~Hi-tech~~ ~~Utilities~~

~~Industrial~~ ~~Other (describe)~~

☐ Agriculture
☐ Biotechnology/Pharmaceuticals/Healthcare
☐ Capital Pool Companies
☐ Communications & Media
☐ Consumer Products & Merchandising
☐ Financial Services – banks & trusts
☐ Financial Services – insurance
☐ Financial Services – investment companies & funds
☐ Financial Services – mortgage investment companies
☐ Financial Services – private equity/venture capital
☐ Financial Services – securitization conduits
☐ Industrial Products
☐ Forestry
☐ Mining – exploration/development
☐ Mining – production
☐ Oil & Gas
☐ Pipelines
☐ Real Estate
☐ Real Estate Investment Trust
☐ Technology
☐ Transportation/Infrastructure
☐ Utilities/Power Generation
☐ Other (describe)
_____

**Item 4: Insiders and promoters of non-reporting issuers**

If the issuer is an investment fund managed by an investment fund manager registered in a jurisdiction of Canada, do not complete this table.

If the issuer is not a reporting issuer in any jurisdiction of Canada, complete the following table by providing information about each ~~insider~~director, executive officer, control person and promoter of the issuer. If the ~~insider~~control person or promoter is not an individual, complete the table for directors and officers of the ~~insider~~control person or promoter.

| **Information about insiders and promoters** | | | |
|---|---|---|---|
| Full name, municipality, province or state and country of principal residence | All positions held (e.g., director, officer, promoter and/or holder of more than 10% of voting securities) | Number and type of securities of the issuer beneficially owned or, directly or indirectly controlled, on the distribution date, including any securities purchased under the distribution | Total price paid for all securities beneficially owned or, directly or indirectly controlled, on the distribution date, including any securities purchased under the distribution (Canadian $) |
| | | | |
| | | | |

**Details of distribution**

**Item 5: Distribution date**

State the distribution date. If this report is being filed for securities distributed on more than one distribution date, state all distribution dates.

**Item 6: Number and type of securities**

For each security distributed:

- describe the type of security;
- state the total number of securities distributed. If the security is convertible or exchangeable, describe the type of underlying security, the terms of exercise or conversion and any expiry date; and
- if the issuer is an investment fund managed by an investment fund manager registered in a jurisdiction of Canada, state the exemption(s) relied on. If more than one exemption is relied on, state the amount raised using each exemption.

**Item 7: Geographical information about purchasers**

Complete the following table for each Canadian and foreign jurisdiction where purchasers of the securities reside. Do not include in this table information about securities issued as payment of commissions or finder's fees disclosed under item 9 of this report. The information provided in this table must reconcile with the information provided in item 8 and Schedules I and II.

| Each Canadian and foreign jurisdiction where purchasers reside | Number of purchasers[1] | Price per security (Canadian $)[1][2] | Total dollar value raised from purchasers in the jurisdiction (Canadian $) |
|---|---|---|---|
| | | | |
| | | | |
| Total number of Purchasers | | | |
| Total dollar value of distribution in all jurisdictions (Canadian $) | | | |

Note 1: If more than one exemption is relied on in the same jurisdiction, state the number of purchasers in that jurisdiction using each exemption.

Note 2: If securities are issued at different prices, list the highest and lowest price for which the securities were sold.

**Item 8: Information about purchasers**

*Instructions*

A. If the issuer is an investment fund managed by an investment fund manager registered in a jurisdiction of Canada, do not complete this table.

B. Information about the purchasers of securities under the distribution is required to be disclosed in different tables in this report. Complete

- the following table for each purchaser that is not an individual, and
- the tables in Schedules I and II of this report for each purchaser who is an individual.

Do not include in the tables information about securities issued as payment of commissions or finder's fees disclosed under item 9 of this report.

C. When identifying the exemption relied on, refer to the specific subsection of National Instrument 45-106 *Prospectus Exemptions*. For example, if relying on the exemption in section 2.10 [*Minimum Amount Investment*], the column should state "2.10(1)". For

exemptions that require the purchaser to meet certain characteristics, such as the exemption in section 2.3 [*Accredited investor*] or section 2.5 [*Family, friends and business associates*], also state the specific paragraph that applies to the purchaser. If the purchaser qualifies under multiple paragraphs, state all paragraphs that apply. For example, when relying on section 2.3 [*Accredited investor*], if the purchaser qualifies under paragraph (j) of the definition of accredited investor in section 1.1, the column must show "2.3(1) – (j)". If the purchaser qualifies under both paragraphs (j) and (k), the column must show "2.3(1) – (j), (k)".

D. An issuer or underwriter completing this table in connection with a distribution using the exemption in subparagraph 6.1(1)(j) [*TSX Venture Exchange offering*] of National Instrument 45-106 *Prospectus ~~and Registration~~ Exemptions* may choose to replace the information in the first column with the total number of purchasers, whether individuals or not, by jurisdiction. If the issuer or underwriter chooses to do so, then the issuer or underwriter is not required to complete the second column or the tables in Schedules I and II.

| **Information about non-individual purchasers** | | | | | | |
|---|---|---|---|---|---|---|
| Full name and address of purchaser and name ~~and~~, telephone number and email address of a contact person | Indicate if the purchaser is an insider (I) of the issuer or a registrant (R) | Number and type of securities purchased | Total purchase price (Canadian $) | Exemption relied on (specific subsection and paragraph) | Date of distribution (yyyy-mm-dd) | Full name of any person compensated for the distribution to this purchaser[1] |
| | | | | | | |
| | | | | | | |

Note 1: The name of the person compensated must reconcile with the information provided in item 9 of this report.

**Commissions and finder's fees**

**Item 9: Commissions and finder's fees**

*Instructions*

A. Complete the following table by providing information for each person who has received or will receive compensation in connection with the distribution(s). Compensation includes commissions, discounts or other fees or payments of a similar nature. Do not include information about payments for services incidental to the distribution, such as clerical, printing, legal or accounting services.

B. If the securities being issued as compensation are or include convertible securities, such as warrants or options, add a footnote describing the terms of the convertible securities, including the term and exercise price. Do not include the exercise price of any convertible security in the total dollar value of the compensation unless the securities have been converted.

| Full name, address, telephone number and email address of the person being compensated | Indicate if the person being compensated is an insider (I) of the issuer[1] or a registrant (R) | Compensation paid or to be paid (cash and/or securities) | | | | |
|---|---|---|---|---|---|---|
| | | Cash (Canadian $) | Securities | | | Total dollar value of compensation (Canadian $) |
| | | | Number and type of securities issued | Price per security (Canadian $) | Exemption relied on and date of distribution (yyyy-mm-dd) | |
| | | | | | | |
| | | | | | | |
| | | | | | | |
| | | | | | | |

**Note 1:** If the issuer is an investment fund, indicate "A" for affiliate or associate if the person being compensated is the investment fund, the investment fund manager, an affiliate of the investment fund manager or a director, officer or employee of any of them. Also indicate "R" if the person is a registrant.

**Certificate**

On behalf of the [issuer/underwriter], I certify that the statements made in this report are true.

Date: _____

_____

Name of [issuer/underwriter] (please print)

_____

Print name, title ~~and~~, telephone number and email address of person signing

_____

Signature

*Instruction*
*The person certifying this report must complete the information in the square brackets by deleting the inapplicable word. For electronic filings, substitute a typewritten signature for a manual signature.*

**Item 10: Contact information**
State the name, title ~~and~~, telephone number and email address of the person who may be contacted with respect to any questions regarding the contents of this report, if different than the person signing the certificate.

**IT IS AN OFFENCE TO MAKE A MISREPRESENTATION IN THIS REPORT.**

**Notice - Collection and use of personal information**
The British Columbia Securities Commission collects and uses the personal information required to be included in this report for the administration and enforcement of the *Securities Act*. If you have any questions about the collection and use of this information, contact the British Columbia Securities Commission at the following address:

**British Columbia Securities Commission**
P.O. Box 10142, Pacific Centre
701 West Georgia Street
Vancouver, British Columbia V7Y 1L2
Telephone: (604) 899-6500
Toll free across Canada: 1-800-373-6393
Facsimile: (604) 899-6581

## Schedule I
## Public information about purchasers who are individuals

A. If the issuer is an investment fund managed by an investment fund manager registered in a jurisdiction of Canada, do not complete the following table or the table in Schedule II.

B. Information about the purchasers of securities under the distribution is required to be disclosed in different tables in this report. Complete

- the following table and the table in Schedule II for each purchaser who is an individual, and
- the table in item 8 for each purchaser that is not an individual.

Do not include in the tables information about securities issued as payment of commissions or finder's fees disclosed under item 9 of this report.

C. An issuer or underwriter filing this report in connection with a distribution using the exemption in subparagraph 6.1(1)(j) [*TSX Venture Exchange offering*] of National Instrument 45-106 *Prospectus and Registration Exemptions* may choose to replace the information in the first column of the table in item 8 with the total number of purchasers, whether individuals or not, by jurisdiction. If the issuer or underwriter chooses to do so, then the issuer or underwriter is not required to complete the following table or the table in Schedule II.

D. The information in the following table is available for public inspection at the British Columbia Securities Commission during normal business hours.

| **Public information about purchasers who are individuals** |
|---|
| *Unless exempted by the British Columbia Securities Commission, a person must not, directly or indirectly, use the information in this table, in whole or in part, for any purpose other than research concerning the issuer for the person's own investment purpose.* |

| Full name of purchaser | Indicate if the purchaser is an insider (I) of the issuer or a registrant (R) | Number and type of securities purchased | Total purchase price (Canadian $) | Date of distribution (yyyy-mm-dd) | Full name of any person compensated for the distribution to this purchaser[1] |
|---|---|---|---|---|---|
| | | | | | |
| | | | | | |

Note 1: The name of the person compensated must reconcile with the information provided in item 9 of this report.

## Schedule II
## Confidential information about purchasers who are individuals

A. Complete the following table for each purchaser who is an individual. The information in this table must reconcile with the table in Schedule I.

B. When identifying the exemption relied on, refer to the specific subsection of National Instrument 45-106 *Prospectus Exemptions*. For example, if relying on the exemption in section 2.10 [*Minimum Amount Investment*], the column should state "2.10(1)". For exemptions that require the purchaser to meet certain characteristics, such as the exemption in section 2.3 [*Accredited investor*] or section 2.5 [*Family, friends and business associates*], also state the specific paragraph that applies to the purchaser. If the purchaser qualifies under multiple paragraphs, state all paragraphs that apply. For example, when relying on section 2.3 [*Accredited investor*], if the purchaser qualifies under paragraph (j) of the definition of accredited investor in section 1.1, the column must show "2.3(1) – (j)". If the purchaser qualifies under both paragraphs (j) and (k), the column must show "2.3(1) – (j), (k)".

C. The information in the following table will not be placed on the public file of the British Columbia Securities Commission.

| **Confidential information about purchasers who are individuals** | |
|---|---|
| Full name, residential address ~~and~~, telephone number and email address of purchaser | Exemption relied on (specific subsection and paragraph) |
| | |
| | |

***Guidance for completing and filing Form 45-106F6***

1. ***Required form in British Columbia*** *- In British Columbia, file this report and the applicable fee using BCSC e-services in accordance with British Columbia Instrument 13-502* Electronic filing of reports of exempt distribution*. If the distribution occurs in British Columbia and one or more other jurisdictions, the issuer is required to file this report in British Columbia and file Form 45-106F1 in the other applicable jurisdictions.*

2. ***What is a distribution?*** *- In British Columbia, "distribution" includes distributions made from British Columbia to purchasers resident in other Canadian or foreign jurisdictions if the issuer has a significant connection to British Columbia. If the issuer has a significant connection to British Columbia, complete the tables in item 8 and Schedules I and II for all purchasers. BC Interpretation Note 72-702* Distribution of Securities to Persons Outside British Columbia *provides guidance on when an issuer has a significant connection to British Columbia.*

   *In British Columbia, "distribution" also includes distributions made from another Canadian or foreign jurisdiction to purchasers resident in British Columbia. If the issuer is from another Canadian or foreign jurisdiction, complete the tables in item ~~8~~8, item 9 and Schedules I and II only for purchasers resident in British Columbia.*

3. ***What is a purchaser?*** *- References to a purchaser in this report are to the beneficial owner of the securities. If a trust company or a registered adviser has purchased on behalf of a fully managed account under subsections 2.3(2) and (4) of National Instrument 45-106* Prospectus Exemptions*, give information about both the trust company or registered adviser and the beneficial owner of the fully managed account.*

4. ***What is an individual?*** *~~- An individual is~~ - Individual is defined in securities legislation to mean a natural person. A corporation, partnership, party, trust, fund, association, and any other organized group of persons is not an individual.*

5. *If a purchaser refuses to provide their telephone number or email address, then indicate "not provided" in the applicable table.*

6. ~~5.~~ ***Space in tables*** *- If the space provided in any table in this Form is insufficient, please adjust the table to include additional space.*

7. ~~6.~~ ***Multiple distributions*** *- One report may be used for multiple distributions occurring within 10 days of each other if the report is filed on or before the 10th day following the first of such distributions.*

8. ~~7.~~ ***Fees*** *- In order to determine the applicable fee, consult Fee Checklist British Columbia Form 11-901F (item # 16).*

**Proposed Form 45-106F9**
***Risk Acknowledgement Form for Individual Accredited Investors***

# WARNING TO INVESTORS

**TO BE COMPLETED BY THE PURCHASER:**

| **1. Acknowledgement of risk** |
|---|
| **I acknowledge that this is a risky investment. I could lose all of the $_____** *[insert amount being invested, including any amounts you have agreed to pay in the future]* **I invest.**<br><br>**I understand that I may never be able to sell these securities and I may not be provided with any ongoing information from the issuer I invest in.** *[Instruction: Delete if issuer is a reporting issuer.]*<br><br>**I acknowledge that, because I am purchasing this investment under the accredited investor prospectus exemption, I will not have the benefit of certain protections under securities law, including detailed disclosure about the investment.** |
| **First and last name** (please print)**:** |
| **Signature:** |
| **Date:** |

| **2. How I qualify to buy these securities** | |
|---|---|
| I confirm that I am an accredited investor because I satisfy at least one of the following tests (initial all that apply): | Purchaser's initials |
| Either alone or with my spouse, I own cash and securities worth more than $1 million, less any related debt. | |
| My net income before taxes was more than $200,000 in each of the 2 most recent calendar years and I expect it to exceed $200,000 in this calendar year. (The amount of net income can be found in your personal income tax form.) | |
| My net income before taxes combined with my spouse's was more than $300,000 in each of the 2 most recent calendar years and I expect our combined net income to exceed $300,000 in this calendar year. (The amount of net income can be found in your personal income tax form.) | |
| Either alone or with my spouse, I own net assets (being my total assets, including real estate, less my total debt) worth more than $5 million. | |

| **3. What I am buying** |
|---|
| Number and type of securities: |
| Name of issuer: |
| I understand that $_____ of my total investment is being paid to the salesperson as a fee or commission. |
| Initial by the purchaser: |

**TO BE COMPLETED BY THE ISSUER OR SELLING SECURITY HOLDER:** *[Instruction: The issuer/selling securityholder must complete this section before delivering this form to the purchaser. If the issuer is an investment fund, the issuer must provide the name of the investment fund, the name and address of the investment fund manager and the name and phone number of a contact person for the investment fund manager.]*

| **4. How to contact the issuer/selling securityholder** |
|---|
| **Name and address of issuer/selling securityholder:** |
| **First and last name of contact person:** |
| **Phone number:** |
| **Email address:** |

**TO BE COMPLETED BY THE PERSON INVOLVED IN THE SALE OF THE SECURITIES:** *[Instruction: Before providing this document to a salesperson, the issuer/selling securityholder must remove the appropriate box to reflect whether the issuer is an investment fund or not. Any person involved in meeting with the purchaser or providing information to the purchaser must complete this section by answering "yes" or "no" and filling in their contact information before delivering this form to the purchaser.]*

| **5. Who is selling these securities?** | **Yes/No** |
|---|---|
| **I am registered with _____ (insert name of registered firm).*** | |
| *[Instruction: Delete if issuer is an investment fund.]* **I am a director, officer or employee of the issuer.** | |
| *[Instruction: Delete if issuer is not an investment fund.]* **I am a director, officer or employee of the investment fund, of the investment fund manager or of an affiliate of the investment fund manager.** | |
| **I am not registered with a securities regulator and generally not qualified to provide investment advice.** | |
| **First and last name** (please print)**:** | |
| **Signature:** | |
| **Date:** | |
| **Phone number:** | |
| **Email address:** | |

***Persons in the business of selling securities or offering investment advice are generally required to be registered with their provincial or territorial securities regulatory authority, unless they have an exemption. A purchaser can check the seller's registration status and history at the following website: www.aretheyregistered.ca.***

***Form Instructions**:*

1. *This form must be presented to purchasers on one double-sided page. The cover page must contain purchaser boxes 1, 2 and 3. The back page must contain issuer/selling securityholder box 4 and salesperson box 5.*

2. *The purchaser, issuer and salesperson (if any) must sign 2 copies of this form. Each of the purchaser and the issuer must receive a signed copy of this form. The issuer is required to keep a copy of this form for 8 years after the distribution. If a salesperson has signed this form, the salesperson may choose to keep a copy for their records. The salesperson must ensure that the purchaser and the issuer receive originally signed copies.*

**Annex E**
**Amended and Restated**
**Companion Policy 45-106CP**
***Prospectus ~~and Registration~~ Exemptions***

**Companion Policy 45-106CP**
***Prospectus ~~and Registration~~ Exemptions***

## PART 1 – INTRODUCTION

National Instrument 45-106 *Prospectus ~~and Registration~~ Exemptions* (~~"~~NI 45-106~~"~~) provides: (i) exemptions from the prospectus requirement~~;~~ and (ii) ~~exemptions from registration requirements; and (iii)~~ one exemption from the issuer bid requirements. ~~The registration exemptions in Part 3 of NI 45-106 will not apply in any jurisdiction **six months** after~~It does not provide exemptions from the requirement to be registered as a dealer, adviser or investment fund manager. National Instrument 31-103 *Registration Requirements ~~and~~, Exemptions and Ongoing Registrant Obligations* (~~"~~NI 31-103~~") comes into force. A subset of registration exemptions will continue to apply after the six month transition period and will be located in NI 31-103.~~) contains some exemptions from the registration requirement.

### 1.1 Purpose

The purpose of this Companion Policy is to help users understand how the provincial and territorial securities regulatory authorities and regulators interpret or apply certain provisions of NI 45-106. This Companion Policy includes explanations, discussion and examples of the application of various parts of NI 45-106.

### 1.2 All distributions and other trades are subject to securities legislation

The securities legislation of a local jurisdiction applies to any trade in, or distribution of, a security in the local jurisdiction, whether or not the issuer of the security is a reporting issuer in that jurisdiction. Likewise, the definition of "trade" in securities legislation includes any act, advertisement, solicitation, conduct or negotiation directly or indirectly in furtherance of a trade. A person who engages in these activities, or other trading activities, must comply with the securities legislation of each jurisdiction in which the trade or distribution occurs.

### 1.3 Multi-jurisdictional distributions

A distribution can occur in more than one jurisdiction. If it does, the person conducting the distribution must comply with the securities legislation of each jurisdiction in which the distribution occurs. For example, a distribution from a person in Alberta to a purchaser in British Columbia may be considered a distribution in both jurisdictions.

### 1.4 Other exemptions

In addition to the exemptions in NI 45-106, exemptions may also be available to persons under securities legislation of each local jurisdiction. The CSA has issued CSA Staff Notice 45-304 *Notice of Local Exemptions Related to National Instrument 45-106 Prospectus and Registration Exemptions and National Instrument 31-103 Registration Requirements and Exemptions* that lists other exemptions available under securities legislation.

### 1.5 Discretionary relief

In addition to the exemptions contained in NI 45-106 and those available under securities legislation of a local jurisdiction, the securities regulatory authority or regulator in each jurisdiction has the discretion to grant exemptions from the prospectus requirement ~~and the registration requirements~~.

### 1.6 ~~Advisers~~ Registration business trigger for trading and advising

Securities legislation requires certain persons to be registered if they are any of the following:

- in the business of trading
- in the business of advising
- ~~Subsection 1.5(2) of NI 45-106 provides that an exemption from the dealer registration requirement in NI 45-106 is deemed to be an exemption from the underwriter registration requirement. However, it is not deemed to be an exemption from the adviser registration requirement. The adviser registration requirement is distinct from the dealer registration requirement. In general terms, persons engaged in the business of, or holding themselves out as being in the business of, providing investment advice are required to be registered, or exempted from registration, under applicable securities legislation. Accordingly, only advisers registered or exempted from registration as advisers may act as advisers in connection with a trade made under NI 45-106.~~holding themselves out as being in the business of trading or advising
- acting as an underwriter
- acting as an investment fund manager

NI 31-103 sets out the requirements for registration as well as certain exemptions from these registration requirements.

Issuers relying on prospectus exemptions to distribute securities, or any selling agents they use, may be required to be registered. Companion Policy 31-103CP gives guidance to issuers on how to apply the registration business trigger.

### 1.7 Underwriters

Underwriters should not sell securities to the public without providing a prospectus. If an underwriter purchases securities with a view to distribution, the underwriter should purchase the securities under the prospectus exemption in section 2.33 of NI 45-106. If the underwriter purchases securities under this exemption, the first trade in the securities will be a distribution. As a result, the underwriter will only be able to resell the securities if it can rely on another exemption from the prospectus requirement, or if a prospectus is delivered to the purchasers of the securities.

There may be legitimate transactions where a dealer purchases securities under a prospectus exemption other than the exemption in section 2.33 of NI 45-106; however, these transactions are only appropriate when the dealer purchases the securities with investment intent and not with a view to distribution.

If a dealer purchases securities through a series of exempt transactions in order to avoid the obligation to deliver a prospectus, the transactions will be viewed as a whole to determine if they constitute a distribution. If a transaction is in effect an indirect distribution, a prospectus will be

required to qualify the sale of the securities despite the fact that each interim step in the transaction could otherwise be completed under a prospectus exemption. Such indirect distributions cannot be legitimately structured under NI 45-106.

### 1.8 Persons created to use exemptions ("syndication")

Sections 2.3(5), ~~3.3(5),~~ 2.4(1), ~~3.4(1),~~ 2.9(3)~~, 3.9(3),~~ and 2.10(2) ~~and 3.10(2)~~ of NI 45-106 specifically prohibit syndications. A distribution ~~or a trade~~ of securities to a person that had no pre-existing purpose and is created or used solely to purchase or hold securities under exemptions (a "syndicate") may be considered a distribution of~~, or trade in,~~ securities to the persons beneficially owning or controlling the syndicate.

For example, a newly formed company with 15 shareholders is set up with the intention of purchasing $150 000 worth of securities under the minimum amount investment exemption. Each shareholder of the newly formed company contributes $10 000. In this situation the shareholders of the newly formed company are indirectly investing $10 000 when the exemption requires that they each invest $150 000. Consequently, both the newly formed company and its shareholders may need to comply with the requirements of the minimum amount investment exemption, or find an alternative exemption to rely on.

Syndication related concerns should not ordinarily arise if the purchaser under the exemption is a corporation, syndicate, partnership or other form of entity that is pre-existing and has a bona fide purpose other than investing in the securities being sold. However, it is an inappropriate use of these exemptions to indirectly distribute ~~or trade~~ securities when the exemption is not available to directly distribute ~~or trade~~ securities to each person in the syndicate.

### 1.9 Responsibility for compliance and verifying purchaser status

A person distributing or trading securities is responsible for determining when an exemption is available.

Some prospectus exemptions in NI 45-106 require the purchaser to be an "accredited investor," an "eligible investor", or a family member, close personal friend or close business associate of a director, executive officer or control person of the issuer of the security. It is the responsibility of the person relying on the exemption to verify that the purchaser meets the characteristics necessary to determine if the exemption is available.

A seller cannot rely on a form of subscription agreement that only states: "I am an accredited investor". Rather the seller must request that the purchaser provide the details on how they fit within the accredited investor definition. Issuers need this information to complete the report of exempt distribution required under Part 6 of the Instrument.

It will not be sufficient to accept standard representations in a subscription agreement or an initial beside a category on the Form 45-106F9 *Risk Acknowledgement Form for Individual Accredited Investors* unless the person relying on the exemption has taken reasonable steps to verify the representation.

Whether the types of steps are reasonable will depend on the particular facts and circumstances of the investor and the offering, including

- how the person relying on the exemption identified or located the potential investor
- what type of accredited investor the investor claims to be
- how much and what type of background information is known about the investor

For example, persons relying on an exemption that requires the purchaser to meet certain characteristics should:

- **Understand, and be able to explain, the conditions of the exemption –** The person relying on the exemption should fully understand the conditions of the exemption and have processes in place to ensure that any employee, officer, director, agent, finder or other intermediary (whether registered or not) retained to identify or approach potential purchasers also fully understand the conditions. This includes understanding and being able to explain to a potential purchaser the meaning of legal terminology used in the exemption. For example, the accredited investor definition uses the terms "financial assets" and "net assets". The person relying on the exemption should be able to clearly explain to potential purchasers the difference between the two terms, such as whether any type of real estate may be included and what types of liabilities should be subtracted when calculating a potential purchaser's financial assets.

- **Verify the purchaser meets the conditions of the exemption –** The person relying on the exemption should describe the conditions of the exemption to the potential purchaser and gather information from the purchaser to confirm their status, before discussing the details of the investment. For the accredited investor exemption, this could include asking the purchaser questions about their income or assets in order to establish that they fit the characteristics of the exemption. The questions should elicit details about the purchaser's financial circumstances. It would not be sufficient to ask a potential purchaser "are you an accredited investor?" For example, asking a potential purchaser questions about their net income in the past two years and expectations of net income in the current year would provide answers with factual information for purposes of assessing the availability of the accredited investor exemption.

- ~~A person distributing or trading securities is responsible for determining when an exemption is available. In determining whether an exemption is available, a person may rely on factual representations by a purchaser, provided that the person has no reasonable grounds to believe that those representations are false. However, the person distributing or trading securities is responsible for determining whether, given the facts available, the exemption is available. Generally, a person distributing or trading~~**Keep relevant and detailed documentation signed by the purchaser –** A person distributing securities under an exemption should retain all necessary documents that show the person properly relied upon the exemption. The person relying on the exemption should consider what documentation they need to collect from purchasers to evidence the steps the seller followed to establish the purchaser met the conditions of the exemption. The seller should ensure it has that documentation signed by the purchaser before distributing securities to that purchaser. For example, an issuer distributing securities to a close personal friend of a director could require that the purchaser provide a signed statement giving the name of the director and describing the nature and length of the purchaser's relationship with the director. ~~On the basis of~~The issuer may want to verify with the director that the information provided by the purchaser is accurate. Based on that factual information, the issuer could determine whether the purchaser is a close personal friend of the

director for the purposes of a family, friends and business associates exemption. ~~The issuer should~~It is not sufficient to rely merely on a written representation: "I am a close personal friend of a director~~". Likewise, under the accredited investor exemptions, the seller must have a reasonable belief that the purchaser understands the meaning of the definition of "accredited investor". Prior to discussing the particulars of the investment with the purchaser, the seller should discuss with the purchaser the various criteria for qualifying as an accredited investor and whether the purchaser meets any of the criteria.~~."

- **Establish policies and procedures –** A person using an employee, officer, director, agent, finder or other intermediary should establish policies and procedures to ensure these parties understand the exemptions, are able to describe them to potential purchasers and know what information and documentation they need to gather from potential purchasers to confirm the purchaser meets the conditions of the exemption. Registered dealers or salespersons must also comply with their obligations under securities legislation, particularly the "know your client" and suitability obligations. Even if the purchaser qualifies as an accredited investor, a registered dealer or salesperson must still assess whether the investment is suitable for the purchaser.

~~It is not appropriate for a person to assume an exemption is available. For instance a seller should not accept a form of subscription agreement that only states that the purchaser is an accredited investor. Rather the seller should request that the purchaser provide the details on how they fit within the accredited investor definition.~~
The person relying on the exemption may need to take further steps or collect additional information depending on the circumstances. For example, if the issuer has reason to believe that a potential purchaser does not earn the income they claim they do, then the issuer may want to ask the purchaser to provide documentation confirming their claims, such as income tax returns, bank statements, investment statements, tax assessments or appraisal reports issued by independent third parties. It is the issuer's responsibility to ensure it is complying with the exemption. If the issuer doubts the truth of the purchaser's statements, the issuer should not sell securities to the purchaser.

### 1.10 Prohibited activities

Securities legislation in certain jurisdictions prohibits any person from making certain representations to a purchaser of securities, including an undertaking about the future value or price of the securities. In certain jurisdictions, these provisions also prohibit a person from making any statement that the person knows or ought reasonably to know is a misrepresentation. These prohibitions apply whether or not a trade or distribution is made under an exemption.

Misrepresentation is defined in securities legislation. The use of exaggeration, innuendo or ambiguity in an oral or written representation about a material fact, or other deceptive behaviour relating to a material fact, might be a misrepresentation.

## PART 2 – INTERPRETATION

### 2.1 Definitions

Unless defined in NI 45-106, terms used in NI 45-106 have the meaning given to them in local securities legislation or in National Instrument 14-101 *Definitions*.

The term “contract of insurance” in the definition of “financial assets” has the meaning assigned to it in the legislation for the jurisdiction referenced in Appendix A of NI 45-106.

### 2.2 Executive officer (“policy making function”)

The definition of “executive officer” in NI 45-106 is based on the definition of the same term contained in National Instrument 51-102 *Continuous Disclosure Obligations* (~~“~~NI 51-102~~”~~).

Paragraph (c) of the definition "executive officer" includes individuals that are not employed by the issuer or any of its subsidiaries, but who perform a policy-making function in respect of the issuer.

The definition includes someone who “performs a policy-making function” in respect of the issuer. The CSA is of the view that an individual who “performs a policy-making function” in respect of an issuer is someone who is responsible, solely or jointly with others, for setting the direction of the issuer and is sufficiently knowledgeable of the business and affairs of the issuer so as to be able to respond meaningfully to inquiries from investors about the issuer.

### 2.3 Directors, executive officers and officers of non-corporate issuers

The term “director” is defined in NI 45-106 and it includes, for non-corporate issuers, individuals who perform functions similar to those of a director of a company.

When the term “officer” is used in NI 45-106, or any of the NI 45-106 forms, a non-corporate issuer should refer to the definitions in securities legislation. Securities legislation in most jurisdictions defines “officer” to include any individual acting in a capacity similar to that of an officer of a company. Therefore, in most jurisdictions, non-corporate issuers must determine which individuals are acting in capacities similar to that of directors and officers of corporate issuers, for the purposes of complying with NI 45-106 and its forms.

For example, the determination of who is acting in the capacity of a director or executive officer may be important where a person intends to distribute~~ or trade~~ securities of a limited partnership under an exemption that is conditional on a relationship with a director or executive officer. The person must conclude that the purchaser has the necessary relationship with an individual who is acting in a capacity with the limited partnership that is similar to that of a director or executive officer of a company.

### 2.4 Founder

The definition of “founder” includes a requirement that, at the time of the distribution of~~, or trade in,~~ a security the person be actively involved in the business of the issuer. Accordingly, a person who takes the initiative in founding, organizing or substantially reorganizing the business of the issuer within the meaning of the definition but subsequently ceases to be actively engaged in the day to day operations of the business of the issuer would no longer be a “founder” for the purposes of NI 45-106, regardless of the person’s degree of prior involvement with the issuer or the extent of the person’s continued ownership interest in the issuer.

## 2.5 Investment fund

Generally, the definition of "investment fund" would not include a trust or other entity that issues securities that entitle the holder to net cash flows generated by: (i) an underlying business owned by the trust or other entity, or (ii) the income-producing properties owned by the trust or other entity. Examples of trusts or other entities that are not included in the definition are business income trusts, real estate investment trusts and royalty trusts.

## 2.6 Affiliate, control and related entity

(1) Affiliate

Section 1.3 of NI 45-106 contains rules for determining whether persons are affiliates for the purposes of NI 45-106, which may be different than those contained in other securities legislation.

(2) Control

The concept of control has two different interpretations in NI 45-106. For the purposes of Division 4 of Part 2 ~~and Division 4 of Part 3 (trades to employees~~(employee, executive ~~officers, directors and consultants~~officer, director and consultant exemptions), the interpretation of control is contained in section 2.23(1)~~ and section 3.23(1), respectively~~. For the purposes of the rest of NI 45-106, the interpretation of control is found in section 1.4 of NI 45-106. The reason for having two different interpretations of control is that the exemptions for distributions of~~, and trades in,~~ securities to employees, executive officers, directors and consultants require a broader concept of control than is considered necessary for the rest of NI 45-106 to accommodate the issuance of compensation securities in a wide variety of business structures.

## 2.7 Close personal friend

For the purposes of both the private issuer ~~exemptions~~exemption in section 2.4 of NI 45-106 and the family, friends and business associates ~~exemptions,~~exemption in section 2.5 of NI 45-106, a "close personal friend" of a director, executive officer, founder or control person of an issuer is an individual who knows the director, executive officer, founder or control person well enough and has known them for a sufficient period of time to be in a position to assess their capabilities and trustworthiness. The term "close personal friend" can include a family member who is not already specifically identified in the exemptions if the family member satisfies the criteria described above.

The relationship between the individual and the director, executive officer, founder or control person must be direct. For example, the exemption is not available to a close personal friend of a close personal friend of a director of the issuer.

An individual is not a close personal friend solely because the individual is:

(a) a relative,

(b) a member of the same organization, association or religious group, ~~or~~

(c) a co-worker, colleague or associate at the same workplace,

(d) a client, customer, former client or former customer, or

(e) connected through some form of social media, such as Facebook or Twitter.

The person relying on the exemption is responsible for determining that the purchaser meets the characteristics required under the exemption. See section 1.9 of this Companion Policy for guidance on how to verify and document purchaser status.

### 2.8 Close business associate

For the purposes of both the private issuer ~~exemptions~~exemption in section 2.4 of NI 45-106 and the family, friends and business associates ~~exemptions,~~exemption in section 2.5 of NI 45-106, a "close business associate" is an individual who has had sufficient prior business dealings with a director, executive officer, founder or control person of the issuer to be in a position to assess their capabilities and trustworthiness.

An individual is not a close business associate solely because the individual is:

(a) a member of the same organization, association or religious group, ~~or~~

(b) a client, customer, former client or former customer, or

(c) a co-worker, colleague or associate at the same workplace.

The relationship between the individual and the director, executive officer, founder or control person must be direct. For example, the exemptions are not available for a close business associate of a close business associate of a director of the issuer.

The person relying on the exemption is responsible for determining that the purchaser meets the characteristics required under the exemption. See section 1.9 of this Companion Policy for guidance on how to verify and document purchaser status.

### 2.9 Indirect interest

Under paragraph (t) of the definition of "accredited investor" in section 1.1 of NI 45-106, an "accredited investor" includes a person in respect of which all of the owners of interests in that person, direct, indirect or beneficial, are accredited investors. The interpretive provision in section 1.2 of NI 45-106 is needed to confirm the meaning of indirect interest in British Columbia.

## PART 3 – CAPITAL RAISING EXEMPTIONS

### 3.1 Soliciting purchasers

Part 2, ~~Division 1, and Part 3,~~ Division 1 (capital raising exemptions) in NI 45-106 ~~do~~does not prohibit the use of registrants, finders, or advertising in any form (for example, internet, e-mail,

direct mail, newspaper or magazine) to solicit purchasers under any of the exemptions. However, use of any of these means to find purchasers under the private issuer ~~exemptions~~exemption in ~~sections~~section 2.4 ~~and 3.4~~ of NI 45-~~106,~~106 or under the family, friends and business associates ~~exemptions~~exemption in ~~sections~~section 2.5~~ and 3.5~~ of NI 45-106, may give rise to a presumption that the relationship required for use of these exemptions is not present. If, for example, an issuer advertises or pays a commission or finder's fee to a third party to find purchasers under the family, friends and business associates ~~exemptions~~exemption, it suggests that the precondition of a close relationship between the purchaser and the issuer may not exist and therefore the issuer cannot rely on ~~these exemptions~~this exemption.

Use of a finder by a private issuer to find an accredited investor, however, would not preclude the private issuer from relying upon the private issuer ~~exemptions~~exemption, provided that all of the other conditions to ~~those exemptions are~~that exemption is met.

Any solicitation activities that aim to identify a particular category of investor should clearly state the kind of investor being sought and the criteria that investors will be required to meet. Any print materials used to find accredited investors, for example, should clearly and prominently state that only accredited investors should respond to the solicitation.

### 3.2 Soliciting purchasers – ~~Newfoundland and Labrador and~~ Ontario

~~In Newfoundland and Labrador and Ontario, the exemptions from the dealer registration requirement identified in section 3.01 of NI 45-106 are not available to a "market intermediary", except as therein provided (or as otherwise provided in local securities legislation – see, for instance, in the case of Ontario, OSC Rule 45-501 *Ontario Prospectus and Registration Exemptions*). Generally, a person is a market intermediary if the person is in the business of trading in securities as principal or agent. In Ontario, the term "market intermediary" is defined in Ontario Securities Commission Rule 14-501 *Definitions*.~~

The Ontario Securities Commission takes the position that if an issuer retains an employee whose primary job function is to actively solicit members of the public for the purposes of selling the issuer's securities, the issuer and its employee are in the business of selling securities. Further, if an issuer and its employees are deemed to be in the business of selling securities the Ontario Securities Commission considers both the issuer and its employees to be market intermediaries. This applies whether the issuer and its employees are located in Ontario and solicit members of the public outside of Ontario or whether the issuer and its employees are located outside of Ontario and solicit members of the public in Ontario. Accordingly, in order to be in compliance with securities legislation, these issuers and their employees should be registered under the appropriate category of registration in Ontario.

### 3.3 Advertising

NI 45-106 does not restrict the use of advertising to solicit or find purchasers. However, issuers and selling security holders should review other securities legislation and securities directions for guidelines, limitations and prohibitions on advertising intended to promote interest in an issuer or its securities. For example, any advertising or marketing communications must not contain a misrepresentation and should be consistent with the issuer's public disclosure record.

### 3.4 Restrictions on finder's fees or commissions

The following restrictions apply with respect to certain exemptions under NI 45-106:

(1) no commissions or finder's fees may be paid to directors, officers, founders and control persons in connection with a distribution ~~or a trade~~ made under the private issuer ~~exemptions~~exemption or the family, friends and business associates ~~exemptions~~exemption, except in connection with a distribution of~~, or trade in,~~ a security to an accredited investor under ~~a~~the private issuer exemption; and

(2) in Northwest Territories, Nunavut and Saskatchewan, only a registered dealer may be paid a commission or finder's fee in connection with a distribution of~~, or a trade in,~~ a security to a purchaser in one of those jurisdictions under ~~an~~the offering memorandum exemption.

### 3.4.1 Reinvestment plans

(1) When is a plan administrator acting "for or on behalf of the issuer"?

~~Sections~~Section 2.2 ~~and 3.2~~ of NI 45-106 ~~contain~~contains a prospectus ~~and dealer registration exemptions~~exemption for distributions of~~, and trades in,~~ securities by a trustee, custodian or administrator acting for or on behalf of the issuer. If the trustee, custodian or administrator is engaged by the issuer, the plan administrator acts "for or on behalf of the issuer" and therefore falls within the language contained in ~~sections~~section 2.2(1) ~~and 3.2(1) of NI 45-106.~~. The fact that the plan administrator may act on or in accordance with instructions of a plan participant, under the plan, does not preclude the administrator from relying on the ~~exemptions~~exemption contained in ~~sections~~section 2.2 ~~or 3.2~~ of NI 45-106.

(2) Providing a description of material attributes and characteristics of securities

The ~~prospectus and dealer registration~~ reinvestment plan ~~exemptions~~exemption in ~~sections~~section 2.2(5) ~~and 3.2(5)~~ of NI 45-106 ~~add~~includes a requirement, effective September 28, 2009, that if the securities distributed ~~or traded~~ under a reinvestment plan~~, in reliance upon a reinvestment plan exemption,~~ are of a different class or series than the securities to which the dividend or distribution is attributable, the issuer or plan agent must have provided the plan participants with a description of the material attributes and characteristics of the securities being distributed ~~or traded~~. An issuer or plan agent with an existing reinvestment plan can satisfy this requirement in a number of ways. If plan participants have previously signed a plan agreement or received a copy of a reinvestment plan that included this information, the issuer or plan agent does not need to take any further action for current plan participants. (Future participants should receive the same type of information before their first trade of a security under the plan.)

If plan participants have not received this information in the past, the issuer or plan agent can provide the required information or a reference to a website where the information is available with other materials sent to holders of that class of securities, for example with proxy materials. ~~Section 8.3.1 of NI 45-106 provides a transition period, allowing the issuer or plan agent to meet this requirement not later than 140 days after the next financial year end of the issuer ending on or after September 28, 2009.~~

(3) Interest payments

The ~~exemptions~~exemption in ~~sections~~section 2.2~~ and 3.2~~ of NI 45-106 may be available where a person invests interest payable on debentures or other similar securities into other securities of the issuer. The words "distributions out of earnings…or other sources" cover interest payable on debentures.

### 3.5 Accredited investor

(1) Individual qualification – financial tests

An individual is an "accredited investor" for the purposes of NI 45-106 if ~~he or she satisfies, either alone or with a spouse, any of the financial asset test in paragraph (j), the net income test in paragraph (k) or the net asset test in paragraph (l) of the "accredited investor" definition in section 1.1 of NI 45-106.~~the individual satisfies one of four tests set out in the "accredited investor" definition in section 1.1 of NI 45-106:

- the $1 000 000 financial asset test in paragraph (j)
- the $5 000 000 financial asset test in paragraph (j.1)
- the net income test in paragraph (k)
- the net asset test in paragraph (l)

~~These~~Three branches of the definition are designed to treat spouses as a single investing unit, so that either spouse qualifies as an "accredited investor" if the combined financial assets~~, net income, or net assets~~ of both spouses exceed ~~the~~ $1 000 000, the combined net income of both spouses exceeds $300 000, or ~~$5 000 000 thresholds, respectively.~~the combined net assets of both spouses exceeds $5 000 000.

The fourth branch, the $5 000 000 financial asset test, does not treat spouses as a single investing unit. If an individual meets the $5 000 000 financial asset test, they also meet the test to be a "permitted client" under NI 31-103. Permitted clients are entitled to waive the "know your client" and suitability obligations of registered dealers and advisers under NI 31-103. Under subsection 2.3(7) of the Instrument, an issuer distributing securities under the accredited investor exemption to an individual who meets the $5 000 000 financial asset test in paragraph (j.1) under the definition of "accredited investor" is not required to obtain a signed risk acknowledgement in Form 45-106F9 *Risk Acknowledgement Form for Individual Accredited Investors* from that individual.

For the purposes of the financial asset ~~test~~tests in ~~paragraph~~paragraphs (j) and (j.1), "financial assets" are defined in NI 45-106 to mean cash, securities, or a contract of insurance, a deposit or an evidence of a deposit that is not a security for the purposes of securities legislation. These financial assets are generally liquid or relatively easy to liquidate. The value of a purchaser's personal residence would not be included in a calculation of financial assets. By comparison, the net asset test under paragraph (l) involves a consideration of all of the purchaser's total assets minus the purchaser's total liabilities. Accordingly, for the purposes of the net asset test, the calculation of total assets would include the value of a purchaser's personal residence and the calculation of total liabilities would include the amount of any liability (such as a mortgage) in respect of the purchaser's personal residence.

If the combined net income of both spouses does not exceed $300 000, but the net income of one of the spouses exceeds $200 000, only the spouse whose net income exceeds $200 000 qualifies as an accredited investor.

(2) Bright-line standards – individuals

The monetary thresholds in the "accredited investor" definition are intended to create "bright-line" standards. Investors who do not satisfy these monetary thresholds do not qualify as accredited investors under the applicable paragraph.

(3) Beneficial ownership of financial assets

~~Paragraph~~Paragraphs (j) and (j.1) of the "accredited investor" definition ~~refers to an individual who, either alone or with a spouse, beneficially owns financial assets having an aggregate realizable value that, before taxes but net of any related liabilities, exceeds $1 000 000.~~refer to the beneficial ownership of financial assets. As a general matter, it should not be difficult to determine whether financial assets are beneficially owned by an individual, an individual's spouse, or both, in any particular instance. However, financial assets held in a trust or in other types of investment vehicles for the benefit of an individual may raise questions as to whether the individual beneficially owns the financial assets in the circumstances. The following factors are indicative of beneficial ownership of financial assets:

(a) physical or constructive possession of evidence of ownership of the financial asset;

(b) entitlement to receipt of any income generated by the financial asset;

(c) risk of loss of the value of the financial asset; and

(d) the ability to dispose of the financial asset or otherwise deal with it as the individual sees fit.

For example, securities held in a self-directed RRSP, for the sole benefit of an individual, are beneficially owned by that individual. In general, financial assets in a spousal RRSP would also be included for the purposes of the ~~threshold~~$1 000 000 financial asset test ~~because~~in paragraph (j) because it takes into account financial assets owned beneficially by a spouse. However, financial assets in a spousal RRSP would not be included for purposes of the $5 000 000 financial asset test in paragraph (j.1). Financial assets held in a group RRSP under which the individual would not have the ability to acquire the financial assets and deal with them directly would not meet ~~these~~the beneficial ownership requirements in either paragraph (j) or paragraph (j.1).

(4) Calculation of an individual purchaser's net assets

To calculate a purchaser's net assets under the net asset test in paragraph (l) of the "accredited investor" definition, subtract the purchaser's total liabilities from the purchaser's total assets. The value attributed to assets should reasonably reflect their estimated fair value. Income tax should be considered a liability if the obligation to pay it is outstanding at the time of the distribution of~~, or trade in,~~ the security.

(4.1) Risk acknowledgement from individual investors

Persons relying on the accredited investor exemption in section 2.3 of NI 45-106 and section 73.3 of the *Securities Act* (Ontario) to distribute securities to individual accredited investors must obtain a completed and signed risk acknowledgement from that individual accredited investor. Under subsection 2.3(7) of the Instrument this requirement does not apply if the individual accredited investor meets the $5 000 000 financial asset test set out in paragraph (j.1) of the "accredited investor" definition.

"Individual" is defined in the securities legislation of certain jurisdictions to mean a natural person. The definition specifically excludes partnerships, unincorporated associations, unincorporated syndicates, unincorporated organizations and trusts. It also specifically excludes a natural person acting in the capacity of trustee, executor, administrator or personal or other legal representative.

(5) Financial statements

The minimum net asset threshold of $5 000 000 specified in paragraph (m) of the "accredited investor" definition must, in the case of a non-individual entity, be shown on the entity's "most recently prepared financial statements". The financial statements must be prepared in accordance with applicable generally accepted accounting principles.

(6) Time for assessing qualification

The financial tests prescribed in the accredited investor definition are to be applied only at the time of the distribution of~~, or trade in,~~ the security. The person is not required to monitor the purchaser's continuing qualification as an accredited investor after the distribution of~~, or trade in,~~ the security is completed.

(7) Recognition or ~~Designation~~designation as an ~~Accredited Investor~~"accredited investor"

Paragraph (v) of the "accredited investor" definition in NI 45-106 contemplates that a person may apply to be recognized or designated as an accredited investor by the securities regulatory authorities or regulators, except in Ontario and Québec, the regulators. The securities regulatory authorities or regulators have not adopted any specific criteria for granting accredited investor recognition or designation to applicants, as the securities regulatory authorities or regulators believe that the "accredited investor" definition generally covers all types of persons that do not require the protection of the prospectus requirement~~ or the dealer registration requirement~~. Accordingly, the securities regulatory authorities or regulators expect that applications for accredited investor recognition or designation will be utilized on a very limited basis. If a securities regulatory authority or regulator considers it appropriate in the circumstances, it may grant accredited investor recognition or designation to a person on terms and conditions, including a requirement that the person apply annually for renewal of accredited investor recognition or designation.

(8) Verifying accredited investor status

Persons relying on the accredited investor exemption are responsible for determining whether a purchaser meets the definition of "accredited investor". See section 1.9 of this Companion Policy for guidance on how to verify and document purchaser status.

**3.6 Private issuer**

(1) Meaning of "the public"

Whether or not a person is a member of the public must be determined on the facts of each particular case. The courts have interpreted "the public" very broadly in the context of securities trading. Whether a person is a part of the public will be determined on the particular facts of each case, based on the tests that have developed under the relevant case law. A person who intends to distribute ~~or trade~~ securities~~,~~ in reliance upon the private issuer prospectus exemption in section 2.4(2) ~~or the private issuer dealer registration exemption in section 3.4(2)~~ of NI 45-~~106,~~106 to a person not listed in paragraphs (a) through (j) of that section will have to satisfy itself that the distribution of~~, or trade in,~~ the security is not to the public.

(2) Meaning of "close personal friends" and "close business associates"

See sections 2.7 and 2.8 of this Companion Policy for a discussion of the meaning of "close personal friend" and "close business associate".

(2.1) Meaning of "non-convertible debt securities"

Paragraph (b) of the definition of private issuer has a number of restrictions that apply to the securities, other than non-convertible debt securities, of a private issuer. Non-convertible debt securities are debt securities that do not have a right or obligation to exchange or convert into another security of the issuer.

(3) Business combination of private issuers

A distribution of~~, or trade in,~~ securities in connection with an amalgamation, merger, reorganization, arrangement or other statutory procedure involving two private issuers, to holders of securities of those issuers is not a distribution of~~, or trade in,~~ a security to the public, provided that the resulting issuer is a private issuer.

Similarly, a distribution of~~, or trade in,~~ securities by a private issuer in connection with a share exchange take-over bid for another private issuer is not a distribution of~~, or trade in,~~ securities to the public, provided the offeror remains a private issuer after completion of the bid.

(4) Acquisition of a private issuer

Persons relying on a private issuer exemption in NI 45-106 must be satisfied that the purchaser is not a member of the public. Generally, however, if the owner of a private issuer sells the business of the private issuer by way of a sale of securities, rather than assets, to another party who acquires all of the securities, the sale will not be considered to have been to the public.

(5) Ceasing to be a private issuer

The term "private issuer" is defined in section 2.4(1) ~~(with the same definition repeated in section 3.4(1)~~ of NI 45-~~106).~~106. A private issuer can distribute securities only to the persons listed in section 2.4(2) of NI 45-106. If a private issuer distributes securities to a person not listed in section 2.4(2), even under another exemption, it will no longer be a private issuer and will not be able to continue to use the private issuer prospectus exemption in section 2.4(2)~~ (or the private issuer dealer registration exemption in section 3.4(2))~~. For example, if a private issuer distributes securities under the offering memorandum exemption, it will no longer be a private issuer.

Issuers that cease to be private issuers ~~will~~do not automatically become "reporting issuers". They are simply no longer able to rely on the private issuer exemption in section 2.4(1). Such issuers would still be able to use other exemptions to distribute their securities. For example, such issuers could rely on the family, friends and business associates prospectus exemption (except in Ontario) or the accredited investor prospectus exemption. However, issuers that rely on these prospectus exemptions must file a report of exempt distribution with the securities regulatory authority or regulator in each jurisdiction in which the distribution took place.

An issuer that completes a going private transaction (for example, by way of an amalgamation squeeze out or a takeover bid with a subsequent statutory compulsory acquisition) can however use the private issuer exemption after a going private transaction.

**3.7 Family, friends and business associates**

(1) Number of purchasers

There is no restriction on the number of persons that the issuer may sell securities to under the family, friends and business associates ~~exemptions~~exemption in ~~sections~~section 2.5~~ and 3.5~~ of NI 45-106. However, an issuer selling securities to a large number of persons under this exemption may give rise to a presumption that not all of the purchasers are family, close personal friends or close business associates and that the exemption may not be available.

(2) Meaning of "close personal friends" and "close business associates"

See sections 2.7 and 2.8 of this Companion Policy for a discussion of the meaning of "close personal friend" and "close business associate".

(3) Risk acknowledgement - Saskatchewan

Under ~~sections~~section 2.6 ~~and 3.6~~ of NI 45-106, the ~~corresponding~~ family, friends and business associates exemption in section 2.5 ~~or 3.5~~ of NI 45-106 cannot be relied upon in Saskatchewan for a distribution of~~, or trade in,~~ securities based on a close personal friendship or close business association unless the person obtains a signed "risk acknowledgement" in the required form from the purchaser and retains the form for eight years after the distribution of~~, or trade in,~~ securities.

**3.8 Offering memorandum**

(1) Eligibility criteria - Alberta, Manitoba, Northwest Territories, Nunavut, Prince Edward Island, Québec and Saskatchewan

Alberta, Manitoba, Northwest Territories, Nunavut, Prince Edward Island, Québec, Saskatchewan, and Yukon impose eligibility criteria on persons investing under the offering memorandum ~~exemptions~~exemption. In these jurisdictions, the purchaser must be an eligible investor if the purchaser's acquisition cost is more than $10 000.

In determining the acquisition cost to a purchaser who is not an eligible investor, include any future payments that the purchaser will be required to make. Proceeds ~~which~~that may be obtained on exercise of warrants or other rights, or on conversion of convertible securities, are not considered to be part of the acquisition cost unless the purchaser is legally obligated to exercise or convert the securities. The $10 000 maximum acquisition cost is calculated per distribution of~~, or trade in,~~ security.

Nevertheless, concurrent and consecutive, closely-timed offerings to the same purchaser will usually constitute one distribution of~~, or trade in,~~ a security. Consequently, when calculating the acquisition cost, all of these offerings by or on behalf of the issuer to the same purchaser who is not an eligible investor would be included. It would be inappropriate for an issuer to try to circumvent the $10 000 threshold by dividing a subscription in excess of $10 000 by one purchaser into a number of smaller subscriptions of $10 000 or less that are made directly or indirectly by the same purchaser.

A purchaser can qualify as an eligible investor under various categories of the definition, including if the purchaser has and has had in prior years either $75 000 pre-tax net income or profit or has $400 000 worth of net assets. In calculating a purchaser's net assets, subtract the purchaser's total liabilities from the purchaser's total assets. The value attributed to assets should reasonably reflect their estimated fair value. Income tax should be considered a liability if the obligation to pay it is outstanding at the time of the distribution of~~, or trade in,~~ a security.

Another way a purchaser can qualify as an eligible investor is to obtain advice from an eligibility adviser. An eligibility adviser is a person registered as an investment dealer (or in an equivalent category of unrestricted dealer in the purchaser's jurisdiction) that is authorized to give advice with respect to the type of security being distributed~~ or traded~~. In Saskatchewan and Manitoba, certain lawyers and public accountants may also act as eligibility advisers.

A registered investment dealer providing advice to a purchaser in these circumstances is expected to comply with the "know your client" and suitability requirements under applicable securities legislation and SRO rules and policies. Some dealers have obtained exemptions from the "know your client" and suitability requirements because they do not provide advice. An assessment of suitability by these dealers is not sufficient to qualify a purchaser as an eligible investor.

(2) Form of offering memorandum

There are two forms of offering memorandum: Form 45-106F3, which may be used by qualifying issuers, and Form 45-106F2, which must be used by all other issuers. Form 45-106F3 requires qualifying issuers to incorporate by reference their annual information form (AIF), management's discussion and analysis (MD&A), annual financial statements and subsequent specified continuous disclosure documents required under NI 51-102.

A qualifying issuer is a reporting issuer that has filed an AIF under NI 51-102 and has met all of its other continuous disclosure obligations, including those in NI 51-102, National Instrument 43-101 *Standards of Disclosure for Mineral Projects*, and National Instrument 51-101 *Standards of Disclosure for Oil and Gas Activities*. Under NI 51-102, venture issuers are not required to file AIFs. However, if a venture issuer wants to use Form 45-106F3, the venture issuer must voluntarily file an AIF under NI 51-102 in order to incorporate that AIF into its offering memorandum.

(3) Date of certificate and required signatories

The issuer must ensure that the information provided to the purchaser is current and does not contain a misrepresentation. For example, if a material change occurs in the business of the issuer after delivery of an offering memorandum to a potential purchaser, the issuer must give the potential purchaser an update to the offering memorandum before the issuer accepts the agreement to purchase the securities. The update to the offering memorandum may take the form of an amendment describing the material change, a new offering memorandum containing up-to-date disclosure or a material change report, whichever the issuer decides will most effectively inform purchasers.

Whatever form of update the issuer uses, it must include a newly signed and dated certificate as required in the applicable subsection 2.9(9), ~~(10), (10.1), (10.2), (10.3), (11), (11.1), or (12) or 3.9(9),~~ (10), (10.1), (10.2), (10.3), (11), (11.1), or (12) of NI 45-106.

"Promoter" is defined differently in provincial and territorial securities legislation across CSA jurisdictions. It is generally defined as meaning a person who has taken the initiative in founding, organizing or substantially reorganizing the business of the issuer or who has received consideration over a prescribed amount for services or property or both in connection with founding, organizing or substantially reorganizing the issuer. "Promoter" has not been defined in the *Securities Act* (Québec) and a broad interpretation is taken in Québec in determining who would be considered a promoter.

Under securities legislation, persons who receive consideration solely as underwriting commissions or in consideration of property and who do not otherwise take part in the founding, organizing or substantially reorganizing the issuer are not promoters. Simply selling securities, or in some way facilitating sales in securities, does not make a person a promoter under the offering memorandum exemptions.

(4) Consideration to be held in trust

The purchaser has, or must be given, the right to cancel the agreement to purchase the securities until midnight on the 2nd business day after signing the agreement. During this period, the issuer must arrange for the consideration to be held in trust on behalf of the purchaser.

It is up to the issuer to decide what arrangements are necessary to preserve the consideration received from the purchaser. The requirement to hold the consideration in trust may be satisfied if, for example, the issuer keeps the purchaser's cheque, without cashing or depositing it, until the expiration of the two business day cancellation period.

It is also the issuer's responsibility to ensure that whoever is holding the consideration promptly returns it to the purchaser if the purchaser cancels the agreement to purchase the securities.

(5) Filing of offering memorandum

The issuer is required to file the offering memorandum with the securities regulatory authority or regulator in each of the jurisdictions in which the issuer distributes ~~or trades~~ securities under an offering memorandum exemption. The issuer must file the offering memorandum on or before the 10th day after the distribution.

If the issuer is conducting multiple closings, the offering memorandum must be filed on or before the 10th day after the first closing. Once the offering memorandum has been filed, there is no need to file it again after subsequent closings, unless it has been updated.

(6) Purchasers' rights

Unless securities legislation in a purchaser's jurisdiction provides a purchaser with a comparable right of cancellation or revocation, an issuer must give each purchaser under an offering memorandum a contractual right to cancel the agreement to purchase the securities by delivering a notice to the issuer not later than midnight on the 2nd business day after the purchaser signs the agreement.

Unless securities legislation in a purchaser's jurisdiction provides purchasers with comparable statutory rights, the issuer must also give the purchaser a contractual right of action against the issuer in the event the offering memorandum contains a misrepresentation. This contractual right of action must be available to the purchaser regardless of whether the purchaser relied on the misrepresentation when deciding to purchase the securities. This right is similar to that given to a purchaser under a prospectus. The purchaser may claim damages or ask that the agreement be cancelled. If the purchaser wants to cancel the agreement, the purchaser must commence the action within 180 days after signing the agreement to purchase the securities. If the purchaser is seeking damages, the purchaser must commence the action within the earlier of 180 days after learning of the misrepresentation or 3 years after signing the agreement to purchase the securities.

The issuer is required to describe in the offering memorandum any rights available to the purchaser, whether they are provided by the issuer contractually as a condition to the use of the exemption or provided under securities legislation.

### 3.9 Minimum amount investment

(1) Baskets of securities

An issuer may wish to distribute ~~or trade~~ more than one kind of security of its own issue, such as shares and debt, in a single transaction under ~~a~~the minimum investment amount exemption. Provided that the shares and debt are sold in units that have a total acquisition cost of not less than $150 000 paid in cash at the time of the distribution of ~~, or trade in,~~ a security**,** the ~~exemptions~~exemption can, if otherwise available, be used, notwithstanding that the acquisition cost of the shares and the acquisition cost of the debt, taken separately, are both less than $150 000.

(2) Not available for distributions to individuals or syndicates

The minimum amount investment exemption in section 2.10 of NI 45-106 is not available for distributions to individuals. "Individual" is defined in the securities legislation of certain jurisdictions to mean a natural person. The definition specifically excludes partnerships, unincorporated associations, unincorporated syndicates, unincorporated organizations and trusts. It also specifically excludes a natural person acting in the capacity of trustee, executor, administrator or personal or other legal representative.

Subsection 2.10(2) of NI 45-106 specifically prohibits using the minimum amount investment exemption to distribute to persons created or used solely to rely on this exemption. See section 1.8 of this Companion Policy for a discussion of the "anti-syndication" provisions in NI 45-106.

## PART 4 - OTHER EXEMPTIONS

### 4.1 Employee, executive officer, director and consultant exemptions

Trustees, custodians or administrators who engage in activities, contemplated in the prospectus ~~and dealer registration exemptions in sections~~exemption in section 2.27~~ and 3.27~~ of NI 45-106, that bring together purchasers and sellers of securities should have regard to the provisions of National Instrument 21-101 *Marketplace Operation* respecting "marketplaces" and "alternative trading systems".

The employee, executive officer, director and consultant exemptions are based on the alignment of economic interests between an issuer and its employees. They may, where available, be used to provide employees and other similar persons with an opportunity to participate in the growth of the employer's business and to compensate persons for the services they provide to an issuer. The securities regulatory authorities or regulators will generally not grant exemptive relief analogous to these exemptions except in very limited circumstances.

### 4.2 Business combination and reorganization

(1) Statutory procedure

The securities regulatory authorities interpret the phrase "statutory procedure" broadly and are of the view that the prospectus ~~and dealer registration exemptions~~exemption contained in ~~sections~~section 2.11 ~~and 3.11~~ of NI 45-106 ~~apply~~applies to all distributions of~~, and trades in,~~ securities of an issuer that are both part of the procedure and necessary to complete the transaction, regardless of when the distribution of~~, or trade in,~~ a security occurs.

The prospectus ~~and dealer registration exemptions~~exemption contained in ~~sections~~section 2.11 ~~and 3.11~~ of NI 45-106 ~~exempt~~exempts distributions of~~, and trades in,~~ securities in connection with an amalgamation, merger, reorganization or arrangement if the same is done "under a statutory procedure". The securities regulatory authorities or regulators are of the view that the references to statutory procedure in sections 2.11~~ and 3.11of NI 45-106~~ are to any statute of a jurisdiction or foreign jurisdiction under which the entities involved have been incorporated or created and exist or under which the transaction is taking place. This would include, for example, an arrangement under the *Companies' Creditors Arrangement Act* (Canada).

(2) Three-cornered amalgamations

Certain corporate statutes permit a so-called "three-cornered merger or amalgamation" under which two companies will amalgamate or merge and security holders of the amalgamating or merging entities will receive securities of a third party affiliate of one amalgamating or merging entity. The prospectus ~~and dealer registration exemptions~~exemption contained in ~~sections~~section 2.11 ~~and 3.11~~ of NI 45-106 ~~refer~~refers to these distributions of~~, or trades in,~~ a security when they refer to a distribution of~~, or a trade in,~~ a security made in connection with an amalgamation or merger done under a statutory procedure.

(3) Exchangeable shares

A transaction involving a procedure described in the prospectus ~~and dealer registration exemptions~~exemption contained in ~~sections~~section 2.11~~ and 3.11~~ of NI 45-106 may include an exchangeable share structure to achieve certain tax-planning objectives. For example, where a non-Canadian company seeks to acquire a Canadian company under a plan of arrangement, an exchangeable share structure may be used to allow the Canadian shareholders of the company to be acquired to receive, in substance, shares of the non-Canadian company while avoiding the adverse tax consequences associated with exchanging shares of a Canadian company for shares of a non-Canadian company. Instead of receiving shares of the non-Canadian company directly, the Canadian shareholders receive shares of a Canadian company which, through various contractual arrangements, have economic terms and voting rights that are essentially identical to the shares of the non-Canadian company and permit the holder to exchange such shares, at a time of the holder's choosing, for shares of the non-Canadian company.

Historically, the use of an exchangeable share structure in connection with a statutory procedure has raised a question as to whether the ~~exemptions~~exemption now contained in ~~sections~~section 2.11 ~~and 3.11~~ of NI 45-106 ~~were~~was available for all distributions~~ or trades~~ necessary to complete the transaction. For example, in the case of the acquisition under a plan of arrangement noted above, the use of an exchangeable share structure may result in a delay of several months or even years between the date of the arrangement and the date the shares of the non-Canadian company are distributed to the former shareholders of the acquired company. As a result of this delay, some filers have questioned whether the distribution of the non-Canadian company's shares upon the exercise of the exchangeable shares may still be viewed as being "in connection with" the statutory transaction, and have made application for exemptive relief to address this uncertainty.

The securities regulatory authorities or regulators take the position that the statutory procedure ~~exemptions~~exemption contained in section 2.11 ~~and section 3.11~~ of NI 45-106 ~~refer~~refers to all distributions ~~or trades~~ of securities that are necessary to complete an exchangeable share transaction involving a procedure described in section ~~2.11 or section 3.11,~~2.11, even where such distributions~~ or trades~~ occur several months or years after the transaction. In the case of the acquisition noted above, the investment decision of the shareholders of the acquired company at the time of the arrangement represented a decision to, ultimately, exchange their shares for shares of the non-Canadian company. The distribution of such shares upon the exercise of the exchangeable shares does not represent a new investment decision, but merely represents the completion of that original investment decision. Accordingly, additional exemptive relief is not warranted in circumstances where the original transaction was completed in reliance on ~~these exemptions~~this exemption.

### 4.3 Asset acquisition - character of assets to be acquired

When issuing securities, issuers must comply with the requirements under applicable corporate or other governing legislation that the securities be issued for fair value. Where securities are issued for non-cash consideration such as assets or resource properties, it is the responsibility of the issuer and its board of directors to determine the fair market value of the assets or resource properties and to retain records to demonstrate how that fair market value was determined. In some situations, cash assets that make up working capital could also be considered in the total calculation of the fair market value.

### 4.4 Securities for debt - *bona fide debt*

A bona fide debt is one that was incurred for value, on commercially reasonable terms and that on the date the debt was incurred the parties believed would be repaid in cash.

A reporting issuer may distribute~~ or trade~~ securities to settle a debt only after the debt becomes due, as evidenced by the creditor issuing an invoice, demand letter or other written statement to the issuer indicating that the debt is due. The securities for debt ~~exemptions~~exemption may not be relied on for the issuance of securities by an issuer to secure a debt that will remain outstanding after the issuance.

### 4.5 Take-over bid and issuer bid

(1) Exempt bids

The terms "take-over bid" and "issuer bid", for the purposes of ~~sections~~section 2.16~~ and 3.16~~ of NI 45-106, include an exempt take-over bid and exempt issuer bid.

(2) Bids involving exchangeable shares

The take-over bid and issuer bid exemptions refer to all distributions~~ or trades~~ necessary to complete a take-over bid or an issuer bid that involves an exchangeable share structure (as described under section 4.2 of this Companion Policy), even where such distributions ~~or trades~~ may occur several months or even years after the bid is completed.

### 4.6 Isolated distribution ~~or trade~~

The ~~exemptions~~exemption contained in section 2.30 ~~and 3.30~~ of NI 45-106 ~~are~~is limited to ~~distributions of, or trades in,~~a distribution of a security made by an issuer in a security of its own issue. ~~There is also an additional isolated trade dealer registration exemption contained in section 3.29 of NI 45-106. While the latter exemption refers to trades in any security, it does not apply to any trades by an issuer in a security that is issued by the issuer.~~It is intended that ~~these exemptions~~this exemption will only be used rarely and ~~are not available for registrants or others whose business is trading in~~not to distribute securities to multiple purchasers.

~~Reliance upon the isolated trade exemption might, for example, be appropriate when a person who is not involved in the business of trading securities wishes to make a single trade of a security that the person owns to another person. The exemption would not be available to a~~

~~person for any subsequent trades for a period of time adequate to ensure that each transaction was truly isolated and unconnected.~~

### 4.7 Mortgages

In British Columbia, Alberta, Manitoba, Québec and Saskatchewan, NI 45-106 specifically excludes syndicated mortgages from the mortgage prospectus ~~and dealer registration exemptions in sections 2.36 and 3.36.~~exemption in section 2.36. In determining what constitutes a syndicated mortgage, issuers will need to refer to the corresponding definition provided in section 2.36~~(1) or 3.36~~(1) of NI 45-106.

The mortgage ~~exemptions do~~prospectus exemption does not apply to distributions ~~or trades~~ in securities that secure mortgages by bond, debenture, trust deed or similar obligation. The mortgage ~~exemptions~~prospectus exemption also ~~do~~does not apply to a distribution of~~, or a trade in,~~ a security that represents an undivided co-ownership interest in a pool of mortgages, such as a pass-through certificate issued by an issuer of asset-backed securities.

### 4.8 Not for profit issuer

(1) Eligibility to use ~~these exemptions~~this exemption

~~These exemptions apply~~This exemption applies to distributions of~~, and trades in,~~ securities of an issuer that is organized exclusively for educational, benevolent, fraternal, charitable, religious or recreational purposes and not for profit ("not for profit issuer"). To use ~~these exemptions~~this exemption, an issuer must be organized exclusively for one or more of the listed purposes and use the funds raised for those purposes.

If an issuer is organized exclusively for one of the listed purposes, but its mandate changes so that it is no longer primarily engaged in the purpose it was organized for, the issuer may no longer be able to rely on ~~these exemptions~~this exemption. For example, if an issuer organized exclusively for educational purposes over time devotes more and more of its efforts to lending money, even if it is only to other educational entities, the lending issuer *may* be unable to rely on these exemptions. The same would also be true if one of an issuer's mandates was to provide an investment vehicle for its members. An issuer that issues securities that pay dividends would also not be able to use these exemptions, because no part of the issuer's net earnings can go to any security holder. However, if the securities are debt securities and the issuer agrees to repay the principal amount with or without interest, the security holders are not considered to be receiving part of the net earnings of the issuer. The debt securities may be secured or unsecured.

If investors could receive any special treatment as a result of purchasing securities, the security holders are *not* typically receiving part of the net earnings of the issuer and the sale may still fit within these exemptions. For example, if the not for profit issuer runs a golf course and offers security holders a waiver of greens fees for three years, it could still rely on ~~these exemptions~~this exemption, provided all other conditions are met (and the exemption remains available in the relevant jurisdiction(s)).

If, at the time of the distribution of~~, or trade in,~~ the security, the purchaser has an entitlement to the assets of the issuer on the basis that they would be getting part of the net earnings of the issuer, then the sale would not fit within ~~these exemptions~~this exemption.

In Québec, not for profit issuers may still rely on the broad exemption available for not for profit issuers under section 3 of the *Securities Act* (Québec).

(2) Meaning of "no commission or other remuneration"

~~Sections~~Section 2.38(b) ~~and 3.38(b) provide~~provides that "no commission or other remuneration is paid in connection with the sale of the security". This is intended to ensure that no one is paid to find purchasers of the securities. However, the issuer may pay its legal and accounting advisers for their legal or accounting services in connection with the sale.

~~**4.9 Exchange contracts**~~

~~The dealer registration exemption for exchange contracts contained in section 3.45 of NI 45-106 (and as limited by section 3.0 of NI 45-106) is only available in Alberta, British Columbia, Québec and Saskatchewan. In Manitoba and Ontario, exchange contracts are governed by commodity futures legislation.~~

~~Except in Saskatchewan, the dealer registration exemption for exchange contracts contained in section 3.45(1)(b) (and as limited by section 3.0) of NI 45-106 provides for trades resulting from unsolicited orders placed with an individual resident outside the jurisdiction. However, if the individual conducts further trades in the future, that individual will be deemed to be carrying on business in the jurisdiction and will not be able to rely on this exemption.~~

## PART 5 – FORMS

### 5.1 Report of ~~Exempt Distribution~~exempt distribution

(1) Requirement to file

An issuer that has distributed a security of its own issue under any of the prospectus exemptions listed in section 6.1 of NI 45-106 is required to file ~~Form 45-106F1 Report of Exempt Distribution~~ a report of exempt distribution, on or before the 10th day after the distribution. Alternatively, if an underwriter distributes securities acquired under section 2.33 of NI 45-106, either the issuer or the underwriter may complete and file the form. If there is a syndicate of underwriters, the lead underwriter may file the form on behalf of the syndicate or each underwriter may file a form relating to the portion of the distribution it was responsible for.

The required form of report is Form 45-106F1 *Report of Exempt Distribution* in all jurisdictions except British Columbia. In British Columbia, the required form of report is Form 45-106F6 *British Columbia Report of Exempt Distribution.*

In determining if it is required to file a report in a particular jurisdiction, the issuer or underwriter should consider the following questions:

(a) Is there a distribution in the jurisdiction? (Please refer to the securities legislation of the jurisdiction for guidance, if any, on when a distribution occurs in the jurisdiction.)

(b) If there is a distribution in the jurisdiction, what exemption from the prospectus requirement is the issuer relying on for the distribution of the security?

(c) Does the exemption referred to in paragraph (b) trigger a reporting requirement? (Reports of exempt distribution are required for distributions made in reliance on the prospectus exemptions listed in section 6.1 of NI 45-106.)

A distribution may occur in more than one jurisdiction. In this case, the issuer is required to file a single report in each Canadian jurisdiction where the distribution has occurred, except British Columbia. The report will set out all distributions in each Canadian jurisdiction.

If the distribution occurs in British Columbia and one or more other jurisdictions, the issuer is required to file Form 45-106F6 with the British Columbia Securities Commission and file Form 45-106F1 in the other applicable jurisdictions.

(2) Access to information in jurisdictions other than British Columbia

The securities legislation of several provinces requires that information filed with the securities regulatory authority or, where applicable, the regulator under such securities legislation, be made available for public inspection during normal business hours except for information that the securities regulatory authority, or where applicable, the regulator,

(a) believes to be personal or other information of such a nature that the desirability of avoiding disclosure thereof in the interest of any affected individual outweighs the desirability of adhering to the principle that information filed with the securities regulatory authority or the regulator, as applicable, be available to the public for inspection,

(b) in Alberta, considers that it would not be prejudicial to the public interest to hold the information in confidence, and

(c) in Québec, considers that access to the information could result in serious prejudice.

Based on the above mentioned provisions of securities legislation, the securities regulatory authorities or regulators, as applicable, have determined that the information listed in Form 45-106F1 *Report of Exempt Distribution,* Schedule I ("Schedule I") discloses personal or other information of such a nature that the desirability of avoiding disclosure of this personal information outweighs the desirability of making the information available to the public for inspection. In addition, in Alberta, the regulator considers that it would not be prejudicial to the public interest to hold the information listed in Schedule I in confidence. In Québec, the securities regulatory authority considers that access to Schedule I by the public in general could result in serious prejudice and consequently, the information listed in Schedule I will not be made publicly available.

(3) Filings in British Columbia

For filings made in British Columbia, issuers are required to file Form 45-106F6 and pay the fees associated with that filing electronically using BCSC e-services. This requirement only applies to ~~Form 45-106F1~~ filings that are required to be made within 10 days of the distribution. It does not apply to ~~Form 45-106F1~~ filings made annually by investment funds under section 6.2(2) of NI 45-106. Please refer to BC Instrument 13-502 *Electronic Filing of Reports of Exempt Distribution* for further information.

### 5.2 Forms required under the offering memorandum exemption

NI 45-106 designates two forms of offering memorandum. The first, Form 45-106F2, is for non-qualifying issuers and the second, Form 45-106F3, can only be used by qualifying issuers (as defined in NI 45-106).

The required form of risk acknowledgment under sections 2.9(1)~~, 3.9(1), 2.9(2)~~ and ~~3.9~~2.9(2) of NI 45-106 is Form 45-106F4.

### 5.3 Real estate securities

Certain jurisdictions impose alternative or additional disclosure requirements in relation to the distribution of real estate securities by offering memorandum. Refer to securities legislation in the jurisdictions where securities are being distributed.

### 5.4 Risk ~~Acknowledgement Form Respecting Close Personal Friends and Close Business Associates~~ acknowledgement form for distributions to close personal friends and close business associates in Saskatchewan

In Saskatchewan, a risk acknowledgment is also required under section 2.6(1) of NI 45-106~~ (and under section 3.6(1))~~ if the person intends to rely upon the "family, friends and business associates exemption" in section 2.5~~ (or in section 3.5)~~ of NI 45-106, which is based on a relationship of close personal friendship or close business association. The form of risk acknowledgement required in these circumstances is Form 45-106F5.

### 5.5 Risk acknowledgement form for distributions to individual accredited investors

A person relying on the accredited investor exemption in section 2.3 of NI 45-106 and section 73.3 of the *Securities Act* (Ontario) to distribute securities to an individual must obtain a signed risk acknowledgement from that individual accredited investor. Under subsection 2.3(7) of this Instrument, this requirement does not apply if the individual accredited investor meets the highest threshold to be an individual accredited investor, that is, the individual owns $5 000 000 of financial assets as set out in paragraph (j.1) of the definition of "accredited investor" in section 1.1 of NI 45-106. The required form of risk acknowledgement for the accredited investor exemption is Form 45-106F9 *Risk Acknowledgement Form for Individual Accredited Investors*.

## PART 6 – RESALE OF SECURITIES ACQUIRED UNDER AN EXEMPTION

### 6.1 Resale restrictions

In most jurisdictions, securities distributed under a prospectus exemption may be subject to restrictions on their resale. The particular resale, or "first trade", restrictions depend on the parties to the distribution and the particular exemption that was relied upon to distribute the securities. In certain circumstances, no resale restrictions will apply and the securities acquired under an exempt distribution will be freely tradable.

Resale restrictions are imposed under National Instrument 45-102 *Resale of Securities* (~~"~~NI 45-102~~"~~). While NI 45-106 contains text boxes providing commentary on resale, these text boxes are intended as guidance only and are not a substitute for reviewing the applicable provisions in NI 45-102 to determine what resale restrictions, if any, apply to the securities in question.

The resale restrictions operate by the resale transaction triggering the prospectus requirement unless certain conditions are satisfied. Securities that are subject to such restrictions in circumstances where the conditions cannot be satisfied may nevertheless be distributed under an exemption from the prospectus requirement, whether under NI 45-106 or other securities legislation.

## PART 7 – TRANSITION

7.1 **Transition – Application of ~~Amendments~~IFRS amendments** – The amendments to NI 45-106 and this Companion Policy which came into effect on January 1, 2011 only apply in respect of an offering memorandum or an amendment to an offering memorandum of an issuer which includes or incorporates by reference financial statements of the issuer in respect of periods relating to financial years beginning on or after January 1, 2011.

[~~Amended October 3, 2011~~]Date amendments effective to be inserted]

**Annex F**
**Proposed Amendments to**
**National Instrument 45-102 *Resale of Securities***

***1. National Instrument 45-102 Resale of Securities is amended by this Instrument.***

***2. Appendix D is amended***

***(a) by replacing "***section 2.3 [*Accredited investor*];***" with "***section 2.3 [*Accredited investor*] *(except in Ontario)*;***",***

***(b) by adding "***section 73.3 of the *Securities Act* (Ontario) [*Accredited Investor*];***" after "***clauses 77(1)(u) and (w) and subclauses 77(1)(ab)(ii) and (iii) of the *Securities Act* (Nova Scotia);***",***

***(c) in section "***3. Ontario Provisions***"***

***(i) by amending the definition of "***Type 1 trade***",***

A. ***by adding "***any of the following***" immediately before paragraph (a),***

B. ***by deleting "***or***" at the end of subparagraph (c),***

C. ***by deleting "***and***" at the end of subparagraph (d), and***

D. ***by adding the following paragraph,***

(e) section 2.1 and section 2.2 of the 2009 OSC Rule 45-501, and**,**

***(ii) by adding the following after "***section 2.5 of MI 45-102***" in paragraph (a)***

- Section 73.5 of the *Securities Act* (Ontario) [*Government incentive security*]**,**

**(a.1) National Instrument 45-106**

- Section 2.3 of National Instrument 45-106 *Prospectus and Registration Exemptions* prior to subsection 12(2) of Schedule 26 of the *Budget Measures Act*, 2009 being proclaimed in force."**,**

***(iii) by replacing paragraph (b) with the following:***

- 2005 OSC Rule 45-501and 2009 OSC Rule 45-501

- Section 2.1 of the 2005 OSC Rule 45-501 and sections 2.1 and 2.2 of the 2009 OSC Rule 45-501.

***3. Appendix E is amended***

***(a) by replacing "***section 2.4 [*Private issuer*];***" with "***section 2.4 [*Private issuer*], except in Ontario;***",***

***(b) by adding "***Section 73.4 of the *Securities Act* (Ontario) [*Private issuer*];***", before*** "Prince Edward Island Local Rule 45-510 – *Exempt Distributions – Exemption for Trades Pursuant to Take Over Bids and Issuer Bids*;***", and***

***(c) by adding the following paragraph to section "***3. Ontario provisions***"***

**(a.1) National Instrument 45-106**

Section 2.4 of National Instrument 45-106 *Prospectus and Registration Exemptions* prior to subsection 12(2) of Schedule 26 of the *Budget Measures Act*, 2009 being proclaimed in force.

***4. Form 45-102F1 is amended by replacing the contact information for the Ontario Securities Commission with the following:***

**Ontario Securities Commission**
20 Queen Street West
22nd Floor
Toronto, Ontario M5H 3S8
Telephone: (416) 593- 8314
Toll free in Canada: 1-877-785-1555
Facsimile: (416) 593-8122
Public official contact regarding indirect collection of information:
Inquiries Officer

***5. This Instrument comes into force on •, 2014.***