CSA/ACVM

Canadian Securities Administrators
Autorités canadiennes en valeurs mobilières

NOTICE AND REQUEST FOR COMMENT

Proposed National Instrument 45-106 *Prospectus and Registration Exemptions*
Form 45-106F1, Form 45-106F2, Form 45-106F3, Form 45-106F4, Form 45-106F5, and
Companion Policy 45-106CP *Prospectus and Registration Exemptions*

December 17, 2004

Introduction

We, the Canadian Securities Administrators (CSA), seek comment on proposed National Instrument 45-106 *Prospectus and Registration Exemptions* (the "Instrument"), which contains exemptions from the prospectus and registration requirements. The Instrument consolidates and harmonizes the prospectus and registration exemptions contained in various provincial statutes and national, multilateral and local instruments into a single national instrument.

Certain of the exemptions require that forms be filed. The required forms are Form 45-106F1 *Report of Exempt Distribution*, Form 45-106F2 *Offering Memorandum for Non-Qualifying Issuers*, Form 45-106F3 *Offering Memorandum for Qualifying Issuers*, Form 45-106F4 *Risk Acknowledgement*, and Form 45-106F5 *Risk Acknowledgement - Saskatchewan Close Personal Friends and Close Business Associates* (the "Forms").

Proposed Companion Policy 45-106CP *Prospectus and Registration Exemptions* (the "Companion Policy") provides guidance on how the CSA will interpret and apply the Instrument and the Forms.

We are publishing the Instrument, Forms and Companion Policy for a 90-day comment period.

We are concurrently publishing an additional CSA Notice proposing repeals and amendments as follows:

- repeal of the following national and multilateral instruments:
    - National Instrument 32-101 *Small Security Holder Selling and Purchase Arrangements* ("NI 32-101")
    - National Instrument 62-101 *Control Block Distribution Issues* ("NI 62-101")
    - Multilateral Instrument 45-103 *Capital Raising Exemptions* ("MI 45-103")
    - Multilateral Instrument 45-105 *Trades to Employees, Senior Officers, Directors and Consultants* ("MI 45-105"), and

- amendments to the following national instruments:
    - National Instrument 33-105 *Underwriting Conflicts*
    - National Instrument 45-101 *Rights Offerings* ("NI 45-101")
    - National Instrument 62-103 *The Early Warning System and Related Take-Over Bid and Insider Reporting Issues* ("NI 62-103")
    - Multilateral Instrument 45-102 *Resale of Securities* ("MI 45-102")

Upon final publication of the Instrument we will publish a third CSA Staff Notice that will cite remaining local exemptions for each jurisdiction.

Each jurisdiction will publish a local notice proposing certain local repeals and amendments. The local notice will also cite local exemptions that are being repealed and not carried forward in the Instrument.

We have prepared a Table of Concordance that cites the location in the Instrument of existing prospectus and dealer registration exemptions for all jurisdictions. The Table of Concordance is being published concurrently with this CSA Notice in Alberta, British Columbia, Saskatchewan, Quebec, Ontario and Nova Scotia.

The Instrument will be implemented as a
- rule or blanket order in British Columbia,
- rule in Alberta, Manitoba, Ontario, Prince Edward Island, Nova Scotia, New Brunswick and Newfoundland and Labrador,
- regulation in Quebec,
- commission regulation in Saskatchewan, and
- policy or code in the Northwest Territories, Nunavut and Yukon.

Purpose and Benefits
We believe that the Instrument will yield substantial benefits and reduce costs to market participants by harmonizing both the majority of prospectus and registration exemptions currently available across Canada, and the disclosure and filing requirements associated with those exemptions.

At present, most jurisdictions have a similar set of exemptions, however they are not identical, and market participants that wish to effect a multi-jurisdictional exempt distribution must familiarize themselves with the various exempt distribution regimes of the relevant jurisdictions. This typically necessitates culling through the various acts, regulations and instruments of the different jurisdictions. Upon implementation of the Instrument, however, market participants will generally have to look no further than the Instrument to view the landscape of exemptions. This should result in reduced transaction costs because market participants will no longer need to

expend time and money dealing with a collection of exempt distribution regimes and their associated disclosure and filing requirements. For example, an issuer that wishes to rely on the accredited investor or business combination exemption to distribute securities across Canada will need to review only one exemption.

In addition to harmonizing the majority of exemptions we have consolidated many exemptions to make them more straightforward and user friendly. Examples of consolidated exemptions are the take-over bid and issuer bid exemption (section 2.16) and the estates, bankruptcies and liquidations exemption (section 3.4). The scope of certain exemptions has been modified and new exemptions have been added in response to a number of relatively routine exemptive relief applications. These changes should yield additional benefits to market participants.

The Instrument contains a few definitions and exemptions that do not apply in all jurisdictions. These differences are necessary to accommodate local securities legislation or as a means of addressing local policy concerns.

Summary

Key Definitions

Canadian Financial Institution
The definition of "Canadian financial institution" is broader than the definition of the same term in National Instrument 14-101 *Definitions*. The definition in the Instrument includes an association or central cooperative society governed by the *Cooperative Credit Associations Act* (Canada) and a league governed by the *Credit Union and Caisse Populaires Act, 1994* (Ontario).

Founder
The Instrument contains the definition for "founder" from MI 45-103. The definition of "founder" is similar to the definition of "promoter" that is currently contained in the securities legislation of most jurisdictions. The difference between "founder" and "promoter" is that a "founder" must be actively involved in the business of the issuer at the time of the trade. Unlike the definition of "promoter", a person cannot become a "founder" solely through the acquisition of a certain percentage of an issuer's securities.

Person
The definition of "person" in the Instrument includes an individual, corporation, partnership, trust or fund. It also includes an association, syndicate, organization or other organized group of persons, whether incorporated or not and an individual or other person in their capacity as a trustee, executor, administrator, or personal or other legal representative.

Interpretations

Control
The concept of control has two different interpretations in the Instrument. For the purposes of Division 4 of Part 2 (trades to employees, executive officers, directors and consultants), the interpretation of control is contained in section 2.23(1). For the purposes of the rest of the

Instrument the interpretation of control is found at section 1.3. The reason for having two different interpretations of control is that the exemption for trades to employees, executive officers, directors and consultants requires a broader concept of control than is considered necessary for the rest of the Instrument to accommodate trades of compensation securities in a wide variety of business structures.

Trade - Quebec
Section 1.7 of the Instrument contains an interpretation of "trade" for the purposes of the Instrument in Quebec. This is necessary because the securities legislation of Quebec does not define "trade" unlike the securities legislation of all other jurisdictions.

Capital Raising Exemptions

Rights Offerings (section 2.1)
The exemption in the Instrument differs from current rights offering exemptions in two ways. First, it does not provide an exemption for the exercise of a right issued under a rights offering. An exemption to permit the exercise of a right issued under a rights offering is contained in section 2.43 of the Instrument, which is a general exemption to facilitate conversions, exchanges or the exercise of rights pursuant to previously issued securities. Secondly, the exemption is *explicitly* conditional on compliance with the applicable requirements of NI 45-101.

Reinvestment Plan (section 2.2)
This exemption does not apply to investment funds. A similar exemption for trades in securities of investment funds is contained in section 2.18 of the Instrument.

Both exemptions allow trades of securities of the issuer to existing security holders of the issuer under a plan if the plan permits the security holder to direct that *"dividends or distributions out of earnings, surplus, capital or other sources"* payable in respect of the issuer's securities be applied to the purchase of additional securities of the same class.

Accredited Investor (section 2.3)
The definition of accredited investor is taken from both MI 45-103 and Ontario Securities Commission Rule 45-501 *Exempt Distributions* ("OSC Rule 45-501") with certain modifications. We have added an investment fund that is managed by a registered adviser (paragraph (u) of the definition of "accredited investor") as an additional category of "accredited investor".

In paragraph (q) of the definition of "accredited investor", an accredited investor includes a person acting on behalf of a fully managed account if the person is registered as an adviser in Canada or, except in Ontario, in a foreign jurisdiction.

Private Issuer (section 2.4)
All jurisdictions are now participating in a common private issuer exemption. It modifies the current private issuer exemption in MI 45-103 and replaces the closely-held issuer exemption in OSC rule 45-501 and the closed company exemption in the *Securities Act* (Quebec).

Family, Friends and Business Associates (section 2.5) and Family, Founder and Control Person - Ontario (section 2.7)
The exemption in section 2.5 is available to certain individuals who are considered to be close to an issuer (executive officers, directors and control persons) and certain of their close family, friends and business associates. This exemption is available in all jurisdictions except Ontario. Saskatchewan requires a signed risk acknowledgment from close friends and business associates (section 2.6).

Section 2.7 of the Instrument contains an Ontario-only exemption for founders, affiliates of founders, control persons and certain family members of founders, executive directors and officers.

Affiliates (section 2.8)
Most jurisdictions do not currently have this exemption, which is currently found in OSC Rule 45-501 where affiliated entities of an issuer are included in the definition of "accredited investor".

Offering Memorandum (section 2.9)
The Instrument contains two versions of the offering memorandum exemption, one for British Columbia, New Brunswick, Nova Scotia and Newfoundland and Labrador and one for Alberta, Manitoba, Northwest Territories, Nunavut, Prince Edward Island, Quebec and Saskatchewan. The primary difference between the two versions is that the second one requires that purchasers either be "eligible investors" as defined in the Instrument or purchase securities at an aggregate acquisition cost that is less than $10,000. Ontario is not adopting the offering memorandum exemption.

Minimum Amount Investment (section 2.10)
All jurisdictions are participating in this exemption, which currently exists in most jurisdictions but in slightly different forms and for different prescribed minimum amounts. Under the Instrument the prescribed minimum amount for all jurisdictions is $150,000, payable in cash at the time of the trade.

Transaction exemptions

Business Combination and Reorganization (section 2.11)
This exemption is based on the exemption in British Columbia with slight modifications. The exemption permits trades that are made in connection with an amalgamation, merger, reorganization or arrangement. We have incorporated the exemption for trades that are made in connection with a dissolution or winding-up of an issuer into this exemption.

Asset Acquisition (section 2.12)
All jurisdictions are participating in this exemption, which currently exists in most jurisdictions but in slightly different forms and for different prescribed minimum amounts. The prescribed minimum amount for all jurisdictions under the Instrument is $150,000.

Petroleum, Natural Gas or Mining Properties (section 2.13)
The exemption allows securities to be traded for mining, petroleum or natural gas properties or any interest in them.

Securities for Debt (section 2.14)
This is a new exemption for most jurisdictions. The exemption is based on the exemption in British Columbia with some modifications.

Issuer Acquisition or Redemption (section 2.15)
The exemption permits issuers to acquire their own securities. Most jurisdictions currently have a similar exemption.

Take-over Bid and Issuer Bid (section 2.16)
We have harmonized this provision for all jurisdictions and created one consolidated exemption for trades under take-over bids and issuer bids.

Offer to Acquire to Security Holder Outside the Local Jurisdiction (section 2.17)
This exemption will allow a trade in a security pursuant to an offer to acquire made by a person in a local jurisdiction that would have been a take-over bid or issuer bid if the offer to acquire were made to a security holder in the local jurisdiction. This exemption will facilitate private company sales in circumstances where the selling security holders are not resident in the local jurisdiction.

Investment Fund Exemptions

Investment Fund Reinvestment (section 2.18)
This section provides a similar exemption to that in section 2.2 but imposes additional conditions that are necessary in the context of trades and distributions of investment funds.

Additional Investment in Investment Funds (section 2.19)
The Instrument carries forward and harmonizes the exemption for trades of additional securities of an investment fund if the purchaser has initially purchased securities at a cost that is not less than $150,000 or if the net asset value of those securities is at least $150,000 at the time of the trade.

Private Investment Club (section 2.20)
This exemption is for trades in securities of investment funds that meet certain criteria. These types of investment funds are commonly referred to as private investment clubs. The provision clarifies that a condition of the exemption is that the private investment club have no more than 50 *beneficial* holders.

Private Investment Fund - Loan and Trust Pools (section 2.21)
This is an exemption for trades in securities of investment funds that are administered by a trust company or trust corporation, have no promoter other than the trust company or trust corporation and consist of co-mingled money of different estates and trusts. Most jurisdictions have a similar version of this exemption contained within their definition of “private mutual fund”.

Employee, Executive Officer, Director and Consultant Exemptions (sections 2.22 to 2.29)

We are including the exemptions from MI 45-105 for trades to employees, executive officers, directors and consultants in the Instrument in Division 4 of Part 2 with some modifications. Section 2.22 defines a number of terms specifically for the purposes of Division 4.

The exemption in section 2.27 of the Instrument that allows trades among employees, executive officers, directors and consultants and their "permitted assigns" (defined term) has been reorganized.

We have not carried forward the exception for trades to "investor relations persons" (defined term) if the compensation or other remuneration paid to such persons is dependent on the trading price or trading volume of the security being traded.

Miscellaneous Exemptions

Incorporation or Organization (section 2.30)
This is a provision for trades by an issuer of its securities if the trades are reasonably necessary to facilitate the incorporation or organization of an issuer and if the securities are issued for a nominal consideration to not more than 5 incorporators or organizers. Most jurisdictions currently have a similar exemption. Given the availability of other exemptions such as the private issuer exemption (section 2.4), the family, friends and business associates exemption (sections 2.5 and 2.6), the family, founder and control person exemption (section 2.7), and the employee exemption (section 2.24), we are inclined to not include this exemption in the final Instrument. **We seek specific comment on whether to include this exemption in the final Instrument**.

Isolated Trade (section 2.31)
There are two isolated trade exemptions in the Instrument. The first one provides an exemption from both the prospectus and registration requirements and is only available to the issuer of the security. This exemption is currently contained in the securities legislation of most jurisdictions. The other isolated trade exemption is in section 3.3.

Dividends (section 2.32)
This provision provides two exemptions relating to dividends. Subsection (1) is an exemption for a trade by an issuer in a security of its own issue to existing security holders as a "dividend or distribution out of earnings, surplus, capital or other sources". Subsection (2) permits a trade by an issuer in a security of a reporting issuer to an existing security holder as a dividend in specie. The exemption in section 2.32(1) differs from the exemption currently available in most jurisdictions, which require that dividends or distributions be payable out of "earnings or surplus". The exemption in the Instrument has been expanded to cover more types of dividends or distributions.

Trade to Lender by Control Person for Collateral (section 2.33)
The Instrument carries forward an exemption for a trade in a security to a lender, pledgee, mortgagee or other encumbrancer from the holdings of a control person for the purpose of giving collateral for a bona fide debt. The Instrument does not carry forward the registration exemption that exists in some jurisdictions for lenders to sell securities to realize on a debt. We believe such lenders should use a registrant or another available exemption (for example the accredited investor exemption) to sell securities under those circumstances.

Acting as Underwriter (section 2.34)
This is an exemption for trades of securities to and among persons acting as underwriters. It is the only exemption under which persons acting as underwriters can acquire securities (section 1.5). The resale by a person who acquires under this section will be deemed a distribution under MI 45-102.

Guaranteed Debt (section 2.35)
The exemption in this section is for trades of "debt securities" that are issued or guaranteed by a variety of entities such as governments, "Canadian financial institutions" and "Schedule III banks". "Debt security", "Canadian financial institution" and "Schedule III bank" are defined in the Instrument. A new requirement is that a "debt security" issued by a foreign government must be rated to qualify under the exemption.

This exemption is broader than the current exemption available in the jurisdictions because it includes debt securities issued by "Canadian financial institutions", which is a fairly wide range of institutions.

The exemption also permits trades of securities issued by certain specified entities such as Ontario school boards, the Comité de gestion de la taxe scolaire de l'île de Montréal, and the Asian Development Bank. The Instrument imposes a reporting requirement (see section 2.35(2)(g)(ii)) in regard to some types of securities that is currently in the securities legislation of most jurisdictions.

We have not included a separate exemption for trades in debt securities issued by trust corporations because those entities are now included in the definition of "Canadian financial institution".

Short Term Debt (section 2.36)
This exemption is for trades in negotiable promissory notes or commercial paper maturing within one year of issue provided the note or paper is not convertible into a different type of security and has an "approved credit rating" from an "approved credit rating organization", which are defined terms for the purposes of the Instrument. The exemption does not impose a minimum for trades to an individual, as is currently the case in some jurisdictions where trades to individuals must be for a denomination or principal amount that is $50,000 or more. The "approved credit rating" requirement is a new requirement for most jurisdictions.

Mortgages (section 2.37)
This provision allows trades in a mortgage on real property by a person who is registered or licensed under mortgage legislation in a jurisdiction of Canada. The exemption does not apply to a "syndicated mortgage", which is defined in the Instrument as meaning a mortgage in which 2 or more persons participate, directly or indirectly as mortgagee. We believe that, given the potential complexity of syndicated mortgages, they should not be traded under this exemption. Most jurisdictions currently have a similar exemption. **We seek specific comment on the decision to exclude syndicated mortgages from the exemption.**

Personal Property Security Act (section 2.38)
The exemption subsection (1) is for trades in a security evidencing indebtedness "secured by or under" a security agreement provided for under personal property security legislation for the acquisition of personal property if the security is not offered for sale to an individual. Most jurisdictions have a similar exemption, which refers to conditional sales contracts or other title retention contracts.

Not for Profit Issuer (section 2.39)
We have carried forward an exemption for trades by an issuer of securities of its own issue if the issuer is organized exclusively for educational, benevolent, fraternal, charitable, religious or recreational purposes and not for profit. The exemption requires that no part of the net earnings of the issuer benefit any security holder and that no commissions or other remuneration be paid in connection with the sale of a security under the exemption. This requirement is new to some jurisdictions.

Variable Insurance Contract (section 2.40)
An exemption for trades in variable insurance contracts by an insurance company is included in the Instrument provided certain conditions are met.

RRSP/RRIF (section 2.41)
The Instrument contains an exemption for trades between an individual or an associate of an individual and the RRSP or RRIF (as defined in the Instrument) established by or for that individual or under which he or she is a beneficiary. Most jurisdictions currently have a similar version of this exemption.

Schedule III Banks and Cooperative Associations(section 2.42)
This exemption was added to permit trades in an evidence of deposit issued by a "Schedule III bank", which is defined in the Instrument as meaning an authorized foreign bank named in Schedule III of the *Bank Act* (Canada), or an association governed by the *Cooperative Credit Associations Act* (Canada).

Conversion, Exchange or Exercise (section 2.43)
This section consolidates existing conversion provisions and allows securities to be traded by an issuer to existing security holders of the issuer if: (i) the issuer trades a security of its own issue in accordance with the terms and conditions of a previously issued security; or (ii) the issuer trades a security of another issuer that is a reporting issuer in accordance with the terms and conditions of a previously issued security. There are three scenarios under which the exemption

is available: (i) conversion, exchange or exercise at the option of the holder; (ii) conversion, exchange or exercise at the option of the issuer; and (iii) automatic conversion, exchange or exercise.

Section 2.43(2) requires the issuer to give the regulator written notice of a trade where the issuer is trading a security of another issuer that is a reporting issuer. The regulator will then have 10 days to object to the trade. This section will not apply in British Columbia.

Removal of Exemptions - Market Intermediaries (section 2.44)
This section removes certain registration exemptions for trades in Ontario by market intermediaries. This is consistent with Ontario's current universal registration regime.

Registration Only Exemptions

Registered Dealer (section 3.1)
This is an exemption for trades by a person acting solely through an agent who is a registered dealer. All jurisdictions currently have this exemption.

Exchange Contracts (section 3.2)
This registration exemption is only available in Alberta, British Columbia, Saskatchewan and Quebec.

Isolated Trade (section 3.3)
There are two isolated trade exemptions in the Instrument. This one provides an exemption from only the registration requirement and is available to any person, other than the issuer of the security. This exemption is currently contained in the securities legislation of most jurisdictions. The other isolated trade exemption is in section 2.31.

Estates, Bankruptcies and Liquidations (section 3.4)
This exemption is intended to consolidate a number of current exemptions for trades under a variety of judicial procedures such as the probate of estates, receivership, bankruptcy, liquidation or judicial sale. Dealer registration exemptions for trades under these proceedings currently exist in most jurisdictions with slight variations among jurisdictions.

Employees of Registered Dealer (section 3.5)
This is an exemption for trades by an employee of a registered dealer if the employee does not usually trade in securities and has been designated by the regulator as a "non-trading" employee. Most jurisdictions currently have a similar exemption.

Small Security Holder Selling and Purchase Arrangements (section 3.6)
This exemption is substantively similar to NI 32-101 except that the exemption in the Instrument does not apply to being registered to advise.

Adviser (section 3.7)
This exemption currently exists in all jurisdictions, but in different variations. Section 3.7(a)(iv) represents a change for most jurisdictions in that it incorporates certain restrictions from Quebec with respect to lawyers, accountants, engineers, teachers and notaries in Quebec. The

restrictions are that those individuals (i) do not recommend securities of an issuer in which they have an interest, and (ii) do not receive remuneration for the service of advising separate from remuneration received by that individual for practicing their profession.

Section 3.7(b) exempts publishers and writers for newspapers, magazines or business journals from registration as advisers provided they (i) give advice only through the publication, (ii) have no interest in the securities they provide advice on, and (iii) receive no commissions or other consideration for the advice other than for acting in their capacity as publisher or writer. This exemption applies for the types of publications set out, *however they are delivered*. As a result, through the operation of National Policy 11-201 *Delivery of Documents by Electronic Means*, the exemption will apply to electronic publications.

Investment Dealer Acting as Portfolio Manager (section 3.8)
This is an exemption from the requirement to be registered as an adviser for registered investment dealers who manage the investment portfolios of clients through discretionary authority. The exemption requires that the registered dealer comply with the rules and policies for portfolio managers set out by the Investment Dealers Association of Canada.

Removal of Exemptions - Market Intermediaries (section 3.9)
This section removes certain registration exemptions for trades in Ontario by market intermediaries. This is consistent with Ontario's current universal registration regime.

Control Block Distributions (Part 4)
This is a prospectus exemption for "control block distributions" (defined in Part 4) by eligible institutional investors. Except for section 4.2, Part 4 is an updated version of NI 62-101. Section 4.2 is a prospectus exemption to facilitate trades by a control person after a take-over bid. Most jurisdictions currently have this or a similar exemption.

TSX Venture Exchange Offering (Part 5)
This Part carries forward the prospectus exemption for TSX Venture Exchange issuers that is currently available in British Columbia, Alberta and Saskatchewan under local rules and orders. Ontario is not adopting this exemption.

Reporting Requirements

Report of Exempt Distribution (Part 6)
Section 6.1 sets out those exemptions that require the filing of a Form 45-106F1. The Form 45-106F1 does not require a vendor that is not the issuer to file a report of exempt distribution.

Exemption (Part 7)

This Part allows the regulator or securities regulatory authority to grant an exemption from the Instrument, in whole or in part, subject to conditions or restrictions as may be imposed in the exemption. In Ontario, only the regulator may grant such an exemption and only from Part 6.

Transitional Provisions and Coming into Force

Transitional (Part 8)
Section 8.1 of the Instrument is an exemption for trades of additional securities of investment funds where there has been an initial trade under an exemption for a prescribed minimum amount. Most jurisdictions currently have this exemption and this provision ensures that persons who initially acquired under a current exemption in any jurisdiction will continue to be able to acquire additional securities.

Section 8.2 of the Instrument provides that an investment fund that distributed its securities under certain existing provisions of securities legislation will be an investment fund under paragraph (n)(ii) of the definition of "accredited investor" in the Instrument.

Capital Accumulation Plans Exemption
As part of a project with the Joint Forum of Financial Market Regulators to develop Guidelines for Capital Accumulation Plans (the "guidelines"), the CSA have proposed a dealer registration and prospectus exemption for trades in mutual funds that occur under certain capital accumulation plans (the "CAP Exemption"). The CSA believe that it is appropriate that the CAP Exemption be available for such trades as long as there is compliance with those parts of the guidelines that substitute for receiving advice from a registrant and for prospectus disclosure. The CAP Exemption was published for comment in May 2004, with CSA Request for Comment 81-405 *Proposed Exemptions for Certain Capital Accumulation Plans*.

Once CSA staff have completed a review of the comments received on the CAP Exemption, it is anticipated that it will be implemented in most jurisdictions as a blanket exemption from the dealer registration and prospectus requirements. We expect that issuance of these blanket exemptions will occur prior to the coming into force of the Instrument. Given that the Instrument's objective is to consolidate and harmonize as many dealer registration and prospectus exemptions as possible, we are seeking comment on whether we should incorporate the CAP Exemption, once finalized, into the Instrument.

Request for Comment
We request your comments on the Instrument, the Forms and the Companion Policy.

How to Provide Your Comments
Please provide your comments by **March 17, 2005**.

Please e-mail your submission as indicated below, but address your submission to all of the CSA member commissions, as follows:

Alberta Securities Commission
British Columbia Securities Commission
Manitoba Securities Commission
New Brunswick Securities Commission
Securities Commission of Newfoundland and Labrador
Registrar of Securities, Department of Justice, Government of the Northwest Territories

Nova Scotia Securities Commission
Registrar of Securities, Legal Registries Division, Department of Justice, Government of Nunavut
Ontario Securities Commission
Office of the Attorney General, Prince Edward Island
Autorité des marchés financiers du Québec
Saskatchewan Financial Services Commission
Registrar of Securities, Government of Yukon

You do not need to deliver your comments to all of the CSA member commissions. Please deliver your comments to the two addresses that follow, and they will be distributed to all other jurisdictions by CSA staff.

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If you are not able to send your comments by e-mail, please send a diskette containing your comments in Word.

We cannot keep submissions confidential because securities legislation in certain provinces requires that a summary of the written comments received during the comment period be published.

Questions

Please refer your questions to any of:

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National Instrument 45-106 *Prospectus and Registration Exemptions*

Table of Concordance: British Columbia to Nova Scotia

This table has been prepared as a reference tool to assist users of NI 45-106. This table should be viewed as guidance only and should not be considered or relied upon as legal advice.

NI 45-106															
Section #	Exemption	British Columbia		Alberta		Saskatchewan		Manitoba		Ontario		Quebec		Nova Scotia	
		Registration Exemption	Prospectus Exemption	Registration Exemption	Prospectus Exemption	Registration Exemption	Prospectus Exemption	Registration Exemption	Prospectus Exemption	Registration Exemption	Prospectus Exemption	Registration Exemption	Prospectus Exemption	Registration Exemption	Prospectus Exemption
Part 2: Prospectus and Registration Exemptions															
Division 1: Capital Raising Exemptions															
2.1	Rights Offering	BCSA: s. 45(2)(8)(i)	BCSA: s. 74(2)(7)(i)	ASA: s. 86(1)(o)(i)	ASA: s. 131(1)(h)(i)	SSA: s. 39(1)(o)	SSA: s. 81(1)(h)	MSA: s. 19(1)(i)	MSA: s. 58(1)(b)	OSA: s. 35(1)14(i)	OSA: s. 72(1)(h)(i)	QSA : s. 155.1 2°	QSA :s. 52 1°, 52 3°, and 53	NSSA: s. 41(1)(o)(i)	NSSA: s. 77(1)(h)(i)
2.2	Reinvestment Plan	BCSA: s. 45(2)(11)(i)	BCSA: s. 74(2)(10)(i)	ASA: s. 86(1)(cc)	ASA: s. 131(1)(y)	SSA: s. 39(1)(ff)	SSA: s. 81(1)(cc)	MSA: s. 19(1)(h.2), Order 230/87 (mutual funds)	MSA: s. 58(1)(b), Order 230/87 (mutual funds)	OSC Rule 45-502	OSC Rule 45-502	QSA: s. 155.1 2°	QSA: s. 52 2°, 52 3° and 53	NSSA: s. 41(1)(z) and (za)	NSSA: s. 77(1)(v) and (va)
2.3	Accredited Investor	MI 45-103: s. 5.1(1)	MI 45-103: s. 5.1(2)	MI 45-103: s. 5.1(1)	MI 45-103: s. 5.1(2)	SSA: s. 39(1)(c); s. 39(3)(a)(b); MI 45-103 s. 5.1	SSA: s. 81(1)(a); s. 81(2)(a)(b); MI 45-103 s. 5.1	MSA: s. 19(1)(c), 19(1)(f) MI 45-103 s. 5.1	MSA: s. 58(1)(a), 58(1)(b), 58(1)(c), 58(2) MI 45-103 s. 5.1	OSC Rule 45-501: s. 2.3	OSC Rule 45-501: s. 2.3	QSA: s. 157	QSA: s. 43, 44 and 45 (sophisticated purchaser)	MI 45-103: s. 5.1(1), NSSA: s. 41(1)(c), (d) and (l)	MI 45-103: s. 5.1(2), NSSA: s. 77(1)(a) and (c)
2.4	Private Issuer	MI 45-103: s.2.1(1)	MI 45-103: s.2.1(2)	MI 45-103: s. 2.1(1)	MI 45-103: s. 2.1(2)	SSA: s. 39(2)(k); MI 45-103 s. 2.1	SSA: s. 82(1)(a); MI 45-103 s. 2.1	MSA: s. 19(2)(i) MI 45-103 s. 2.1	MSA: s. 58(3)(a) MI 45-103 s. 2.1	No analogous provision	No analogous provision	QSA: s. 3 2° (closed company)	QSA: s. 3 2° (closed company)	MI 45-103: s. 2.1(1), NSSA: s. 41(2)(j)	MI 45-103: s. 2.1(2), NSSA: s. 78(1)(a)
2.5	Family, Friends and Business Associates	MI 45-103: s.3.1(1)	MI 45-103: s.3.1(2)	MI 45-103: s. 3.1(1)	MI 45-103: s. 3.1(2)	SSA: s. 39(1)(cc); MI 45-103 s. 3.1	SSA: s. 81(1)(z): MI 45-103 s. 3.1	MI 45-103: s. 3.1	MI 45-103: s. 3.1	No analogous provision	No analogous provision	No analogous provision	No analogous provision	MI 45-103: s. 3.1(1), NSSA: s. 41(1)(w) and (x)	MI 45-103: s. 3.1(2), NSSA: s. 77(1)(s) and (t)
2.7	Family, Founder and Control Person - Ontario	No analogous provision	No analogous provision	No analogous provision	No analogous provision	No analogous provision	No analogous provision	No analogous provision	No analogous provision	OSC Rule 45-501: s. 2.3	OSC Rule 45-501: s. 2.3	No analogous provision	No analogous provision	No analogous provision	No analogous provision
2.8	Affiliates	No analogous provision	No analogous provision	No analogous provision	No analogous provision	No analogous provision	No analogous provision	No analogous provision	No analogous provision	OSC Rule 45-501: s. 2.3	OSC Rule 45-501: s. 2.3	No analogous provision	No analogous provision	No analogous provision	No analogous provision
2.9	Offering Memorandum	MI 45-103: s. 4.1(1)	MI 45-103: s. 4.1(3)	MI 45-103: s. 4.1(3)	MI 45-103: s. 4.1(4)	SSA: s. 39(1)(y); MI 45-103 s. 4.1	SSA: s. 81(1)(s); MI 45-103 s. 4.1	MI 45-103: s. 4.1	MI 45-103: s. 4.1	No analogous provision	No analogous provision	QSA: s. 155.1 2°	QSA: s. 47, 48 and 48.1 and QSR: s. 66	MI 45-103: s. 4.1(1), NSSA: s. 41(1)(v)	MI 45-103: s. 4.1(2), NSSA: s. 77(1)(p)
2.10	Minimum Amount Investment	BCSA: s. 45(2)(5)	BCSA: s. 74(2)(4)	ASC General Rules: s. 66.2	ASC General Rules: s. 122.2	SSA: s. 39(1)(e);	SSA: s. 81(1)(d);	MSA: s. 19(3) Reg. s. 90	MSA: s. 58(1)(a) Reg s. 90	No analogous provision	No analogous provision	QSA: s. 155.1 2°	QSA: s. 51	NSSA: s. 41(1)(e)	NSSA: s. 77(1)(d)
Division 2: Transaction Exemptions															

National Instrument 45-106 *Prospectus and Registration Exemptions*

Table of Concordance: British Columbia to Nova Scotia

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NI 45-106															
Section #	**Exemption**	**British Columbia**		**Alberta**		**Saskatchewan**		**Manitoba**		**Ontario**		**Quebec**		**Nova Scotia**	
		Registration Exemption	**Prospectus Exemption**	**Registration Exemption**	**Prospectus Exemption**	**Registration Exemption**	**Prospectus Exemption**	**Registration Exemption**	**Prospectus Exemption**	**Registration Exemption**	**Prospectus Exemption**	**Registration Exemption**	**Prospectus Exemption**	**Registration Exemption**	**Prospectus Exemption**
2.11	Business Combination and Reorganization	BCSA: s. 45(2)(9)(i) and (ii), and s. 45(2)(12)(ii)	BCSA: s. 74 (2)(8) (i) and (ii), and s. 74(2)(11)(ii)	ASA: s. 86(1) (m)(ii), (p) & (dd)	ASA: s. 131(1)(i), (f)(ii), (z)	SSA: s. 39(1)(m)(ii);(p),(p .1)	SSA: s. 81(1)(f)(ii);(i),(i.1)	MSA: s. 19(1)(h.3)	MSA: s. 58(1)(b)	OSC Rule 45-501: s. 2.8, OSA: s. 35(1)12(ii), s. 35(1)15	OSC Rule 45-501: s. 2.8, OSA: s. 72(1)(f)(ii), s. 72(1)(i)	QSA: s. 155.1 2°	QSA: s. 50	NSSA: 41(1)(m)(ii) and 41(1)(p), Blanket Order No. 45-503	NSSA: s. 77(1)(f)(ii) and 77(1)(i), Blanket Order No. 45-503
2.12	Asset Acquisition	BCSA: s. 45(2)(6)	BCSA: s. 74(2)(5)	ASA: s. 86(1)(s) & ASC Gen Rules s. 66.1	ASA: s. 131(1)(l) & ASC Gen Rules s. 122.1	SSA: s. 39(1)(t)	SSA: s. 81(1)(m)	No analogous provision	No analogous provision	OSC Rule 45-501: s. 2.16	OSC Rule 45-501: s. 2.16	No analogous provision	No analogous provision	NSSA: s. 41(1)(s)	NSSA: s. 77(1)(l)
2.13	Petroleum, Natural Gas and Mining Properties	BCSA: s. 45(2)(21)	BCSA: s. 74(2)(18)	ASA: s. 87(k)	ASA: s. 131(1)(m)	SSA: s. 39(1)(z)	SSA: s. 81(1)(n)	MSA: s. 19(1)(b)(v), 19(1)(l)(iii)	MSA: s. 58(1)(b)	OSA: s. 35(2)14	OSA: s. 72(1)(m)	No analogous provision	No analogous provision	NSSA: s. 41(2)(n)	NSSA: s. 78(1)(a)
2.14	Securities for Debt	BCSC Rules: s. 89(c)	BCSC Rules: s. 128 (e)	No analogous provision	No analogous provision	SSA: s. 39(1)(m.1)	SSA: s. 81(1)(f.1)	No analogous provision	No analogous provision	No analogous provision	No analogous provision	No analogous provision	No analogous provision	No analogous provision	No analogous provision
2.15	Issuer Acquisition or Redemption	BCSA: s. 45(2)(29)	BSCA: s. 74(2)(27)	ASA s. 86(1)(t)	ASA s. 131(1)(n)	SSA: s. 39(1)(s)	SSA: s. 81(1)(l)	MSA: s. 19(1)(h.1)	MSA: s. 58(1)(b)	OSC Rule 45-501: s. 2.3	OSC Rule 45-501: s. 2.3	No analogous provision	No analogous provision	NSSA: s. 41(1)(ad)	NSSA: s. 77(1)(x)
2.16	Take-over Bid and Issuer Bid	BCSA: ss. 45(2)(24) and (28)	BCSA: s. 74(2)(21), (24), (25) and (26)	ASA s. 86(1)(q), (r) and (ee)	ASA s. 131(1)(j), (k) and (aa)	SSA: s. 39(1)(q),(r)	SSA: s. 81(1)(j),(k)	MSA: s. 19(1)(k)	MSA: s. 58(1)(b)	OSA: s. 35(1)16,17, OSC Rule 45-501: s. 2.5	OSA: s. 72(1)(j),(k), OSC Rule 45-501: s. 2.5	QSA : s. 155.1 2.1°	QSA : s. 63	NSSA: s. 41(1)(q) and (r)	NSSA: s. 77(1)(j) and (k)
2.17	Offer to Acquire to Security Holder Outside Local Jurisdiction	No analogous provision	No analogous provision	No analogous provision	No analogous provision	No analogous provision	No analogous provision	No analogous provision	No analogous provision	OSC Rule 45-501: s. 2.15	OSC Rule 45-501: s. 2.15	No analogous provision	No analogous provision	No analogous provision	No analogous provision
Division 3: Investment Fund Exemptions															
2.18	Investment Fund Reinvestment	BCSA: s. 45(2)(25)	BCSA: s. 74(2)(22)	ASC General Rules: s. 66(b)	ASC General Rules: s. 122(b)	SSA: s. 39(1)(gg)	SSA: s. 81(1)(dd)	No analogous provision	No analogous provision	OSC Rule 81-501	OSC Rule 81-501	QSA: s. 155.1 2°	QSA: s. 52 2° and 53	NSSA: s. 41(1)(ai)	NSSA: s. 77(1)(ac)
2.19	Additional Investment in Investment Funds	BCSA: s. 45(2)(22)	BCSA: s. 74(2)(19)	ASC General Rules: s. 66(c)	ASC General Rules: s. 122(c)	SSA: s. 39(1)(hh)	SSA: s. 81(1)(ee)	No analogous provision	No analogous provision	OSC Rule 45-501: s.2.12(1)	OSC Rule 45-501: s.2.12(1)	No analogous provision	No analogous provision	NSSA: s. 41(1)(aj)	NSSA: s. 77(1)(ad)

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Table of Concordance: British Columbia to Nova Scotia

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NI 45-106															
Section #	**Exemption**	**British Columbia**		**Alberta**		**Saskatchewan**		**Manitoba**		**Ontario**		**Quebec**		**Nova Scotia**	
		Registration Exemption	**Prospectus Exemption**	**Registration Exemption**	**Prospectus Exemption**	**Registration Exemption**	**Prospectus Exemption**	**Registration Exemption**	**Prospectus Exemption**	**Registration Exemption**	**Prospectus Exemption**	**Registration Exemption**	**Prospectus Exemption**	**Registration Exemption**	**Prospectus Exemption**
2.20	Private Investment Club	BCSA: s. 46(c)	BCSA: s. 75(a)	ASA: s. 87(c)	ASA: s. 143(1)(a)	SSA: s. 39(2)(C)	SSA: s. 82(1)(a)	No analogous provision	No analogous provision	OSA: s. 35(2)3	OSA: s. 73(1)(a)	QSA: s. 3 12°	QSA: s. 3 12°	NSSA: s. 41(2)(c)	NSSA: s. 78(1)(a)
2.21	Private Investment Fund Loan and Trust Pools	BCSA: s. 46(c)	BCSA: s. 75(a)	ASA: s. 87(c)	ASA: s. 143(1)(a)	SSA: s. 39(2)(d)	SSA: s. 82(1)(a)	No analogous provision	No analogous provision	OSA: s. 35(2)3, OSC Rule 45-501: s.3.3	OSA: s. 73(1)(a), OSC Rule 45-501: s.3.3	No analogous provision	No analogous provision	Blanket Order No. 13	Blanket Order No. 13

National Instrument 45-106 *Prospectus and Registration Exemptions*

Table of Concordance: British Columbia to Nova Scotia

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NI 45-106															
Section #	**Exemption**	**British Columbia**		**Alberta**		**Saskatchewan**		**Manitoba**		**Ontario**		**Quebec**		**Nova Scotia**	
		Registration Exemption	**Prospectus Exemption**	**Registration Exemption**	**Prospectus Exemption**	**Registration Exemption**	**Prospectus Exemption**	**Registration Exemption**	**Prospectus Exemption**	**Registration Exemption**	**Prospectus Exemption**	**Registration Exemption**	**Prospectus Exemption**	**Registration Exemption**	**Prospectus Exemption**
Division 4: Employee, Executive Officer, Director and Consultant Exemptions															
2.24	Employee, Executive Officer, Director, and Consultant	BCSA: s. 45(2)(10)(i)(ii)(iii), BCSC Rules: s. 89(f), MI 45-105: s. 2.1(1)	BCSA: s. 74(2)(9) (i)(ii)(iii), BCSC Rules: s. 128(g) and MI 45-105: s. 2.1(2)	MI 45-105: s. 2.1(1)	MI 45-105: s. 2.1(2)	SSA: s. 39(1)(u); MI 45-105: s. 2.1(1)	SSA: s. 81(1)(o); MI 45-105: s. 2.1(2)	MI 45-105: s. 2.1(1)	MI 45-105: s. 2.1(2)	MI 45-105: s. 2.1(1)	MI 45-105: s. 2.1(2)	QSA: s. 155.1 2°	QSA: s. 52 5° (for employees and senior executives only) and Policy Statement Q3	MI 45-105: s. 2.1(1), NSSA: s. 41(1)(t) and 41(1)(al)	MI 45-105: s. 2.1(2), NSSA: s. 77(1)(n) and 77(1)(af)
2.26	Trades Among Current or Former Employees, Executive Officers, Directors, or Consultants of a Non-Reporting Issuer	MI 45-105: s.2.2(1)	MI 45-105: s. 2.2(2)	MI 45-105: s. 2.2(1)	MI 45-105: s. 2.2(2)	MI 45-105: s. 2.2(1)	MI 45-105: s. 2.2(2)	MI 45-105: s. 2.2(1)	MI 45-105: s. 2.2(2)	MI 45-105: s. 2.2(1)	MI 45-105: s. 2.2(2)	No analogous provision	No analogous provision	MI 45-105: s. 2.2(1)	MI 45-105: s. 2.2(2)
2.27	Permitted Transferees	BCSA: s.45(2)(10)(iii) and MI 45-105 s.2.4(1), (2)	BCSA: s. 74(2)(9)(iii) and MI 45-105: s.2.4(3)	MI 45-105: s. 2.4(1) , (2)	MI 45-105: s. 2.4(3)	MI 45-105: s. 2.4(1) , (2)	MI 45-105: s. 2.4(3)	MI 45-105: s. 2.4(1), (2)	MI 45-105: s. 2.4(3)	MI 45-105: s. 2.4(1), (2)	MI 45-105: s. 2.4(3)	No analogous provision	No analogous provision	MI 45-105: s. 2.4(1), (2)	MI 45-105: s. 2.4(3)
2.28	Resale - Non-reporting Issuer	MI 45-105: s. 3.2		MI 45-105: s. 3.2		MI 45-105: s. 3.2		MI 45-105: s. 3.2		MI 45-105: s. 3.2		No analogous provision		MI 45-105: s. 3.2	
2.29	Issuer Bid	MI 45-105: s. 4.1, Issuer Bid Exemption Only		MI 45-105: s. 4.1, Issuer Bid Exemption Only		MI 45-105: s. 4.1, Issuer Bid Exemption Only		MI 45-105: s. 4.1, Issuer Bid Exemption Only		MI 45-105: s. 4.1, Issuer Bid Exemption Only		QSA: s. 147.21 3°, Issuer Bid Exemption Only		MI 45-105: s. 4.1, Issuer Bid Exemption Only	
Division 5: Miscellaneous Exemptions															
2.30	Incorporation or Organization	BCSA: s. 45(2)(15)	BCSA: s. 74(2)(14)	No analogous provision	No analogous provision	SSA: s. 39(1)(v)	SSA: s. 81(1)(p)	No analogous provision	No analogous provision	OSA: s. 35(1)20	OSA: s. 72(1)(o)	QSA: s. 155.1 2°	QSA: s. 54	NSSA: s. 41(1)(u)	NSSA: s. 77(1)(o)
2.31	Isolated Trade by Issuer	BCSA: s. 45(2)(3)	BCSA: s. 74(2)(2)	ASA: s. 86(1)(b)	ASA: s. 131(1)(b)	SSA: s. 39(1)(b)	SSA: s. 81(1)(b)	MSA: s. 19(1)(b)	MSA: s. 58(1)(b)	OSA: s. 35(1)2	OSA: s. 72(1)(b)	QSA: s. 3 8°	QSA: s. 3 8° (for debt securities only)	NSSA: s. 41(1)(b)	NSSA: s. 77(1)(b)
2.32	Dividends	BCSA: s. 45(2)(12)(i) s. 45(2)(14)	BCSA: s. 74(2)(11)(i), s. 74(2)(13)	ASA: s. 86(1)(m)(i) and (n)	ASA: s. 131(1)(f)(i) & (g)	SSA: s. 39(1)(m)(i);(n)	SSA: s. 81(1)(f)(i);(g)	MSA: s. 19(1)(h.2)	MSA: s. 58(1)(b)	OSA: s. 35(1)12(i), 13	OSA: s. 72(1)(f)(i),(g)	QSA: s. 155.1 2°	QSA: s. 52 2°	NSSA: s. 41(1)(m)(i) and 41(1)(n)	NSSA: s. 77(1)(f)(i) and 77(1)(g)

National Instrument 45-106 *Prospectus and Registration Exemptions*

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NI 45-106															
Section #	**Exemption**	**British Columbia**		**Alberta**		**Saskatchewan**		**Manitoba**		**Ontario**		**Quebec**		**Nova Scotia**	
		Registration Exemption	**Prospectus Exemption**	**Registration Exemption**	**Prospectus Exemption**	**Registration Exemption**	**Prospectus Exemption**	**Registration Exemption**	**Prospectus Exemption**	**Registration Exemption**	**Prospectus Exemption**	**Registration Exemption**	**Prospectus Exemption**	**Registration Exemption**	**Prospectus Exemption**
2.33	Trade to Lender by Control Person for Collateral	No analogous provision	No analogous provision	ASA: s. 86(1)(f)	ASA: s. 131(1)(e)	SSA: s. 39(1)(f)	SSA: s. 81(1)(e)	No analogous provision	No analogous provision	OSA: s. 35(1)6	OSA: s. 72(1)(e)	No analogous provision	No analogous provision	NSSA: s. 41(1)(f)	NSSA: s. 77(1)(e)
2.34	Acting as Underwriter	BCSA: s. 45(2)(16)	BCSA: s. 74(2)(15)	No analogous provision	No analogous provision	SSA: s. 39(1)(i)	SSA: s. 81(1)(u)	MSA: s. 19(1)(f)	MSA: s. 58(1)(b)	OSA: s. 35(1)9	OSA: s. 72(1)(r)	QSA: s. 155.1 2°	QSA: s. 55	NSSA: s. 41(1)(i)	NSSA: s. 77(1)(r)
2.35	Guaranteed Debt	BCSA: s. 46(a)	BCSA: s. 75(a)	ASA: s. 87(a) and (b)	ASA: s. 143(1)(a)	SSA: s. 39(2)(a)	SSA: s. 82(1)(a)	MSA: s. 19(2)(a)	MSA: s. 58(3)(a)	OSA: s. 35(2)1, 2, OSC Rule 45-501: s. 2.10	OSA: s. 73(1)(a), OSC Rule 45-501: s. 2.10	QSA: s. 3 par 1°, 14° and 15° and s. 157.1 2°	QSA: s. 3 par 1°, 14° and 15° and s. 41	NSSA: s. 41(2)(a)	NSSA: s. 78(1)(a)
2.36	Short-term debt	BCSA: s. 46(d)	BCSA: s. 75(a)	ASA: s. 87(d)	ASA: s. 143(1)(a)	SSA: s. 39(2)(e)	SSA: s. 82(1)(a)	MSA: s. 19(2)(c)	MSA: s. 58(3)(a)	OSA: s. 35(2)4	OSA: s. 73(1)(a)	QSA: s. 155.1 2°	QSA: s. 41 3°	NSSA: s. 41(2)(d)	NSSA: s. 78(1)(a)
2.37	Mortgages	BCSA: s. 46(e)	BCSA: s. 75(a)	ASA: s. 87(e)	ASA: s. 143(1)(a)	SSA: s. 39(2)(f)	SSA: s. 82(1)(a)	MSA: s. 19(2)(d)	MSA: s. 58(3)(a)	OSA: s. 35(2)5	OSA: s. 73(1)(a)	No analogous provision	No analogous provision	NSSA: s. 41(2)(e)	NSSA: s. 78(1)(a)
2.38	Personal Property Security Act	BCSA: s. 46(f)	BCSA: s. 75(a)	ASA: s. 87(f)	ASA: s. 143(1)(a)	SSA: s. 39(2)(g)	SSA: s. 82(1)(a)	MSA: s. 19(2)(e)	MSA: s. 58(3)(a)	OSA: s. 35(2)6	OSA: s. 73(1)(a)	QSA: s. 3 7°	QSA: s. 3 7°	NSSA: s. 41(2)(f)	NSSA: s. 78(1)(a)
2.39	Not for profit issuer	BCSA: s. 46(g)	BCSA: s. 75(a)	ASA: s. 87(g)	ASA: s. 143(1)(a)	SSA: s. 39(2)(h)	SSA: s. 82(1)(a)	MSA: s. 19(2)(f)	MSA: s. 58(3)(a)	OSA: s. 35(2)7	OSA: s. 73(1)(a)	QSA: s. 3 3°	QSA: s. 3 3°	NSSA: s. 41(2)(g)	NSSA: s. 78(1)(a)
2.40	Variable Insurance Contract	BCSA: s. 46(l)	BCSA: s. 75(a)	ASA: s. 87(l)	ASA: s. 143(1)(a)	SSA: s. 39(2)(o)	SSA: s. 82(1)(a)	Man. Reg. 491/88R: s. 76	Man. Reg. 491/88R: s. 76	OSC Rule 45-501: s. 2.2	OSC Rule 45-501: s. 2.2	QSA : s. 3 13°	QSA : s. 3 13°	NSSA: s. 41(2)(o)	NSSA: s. 78(1)(a)
2.41	RRSP/RRIF	No analogous provision	No analogous provision	ASC Rule 45-502	ASC Rule 45-502	MI 45-105 (Limited to certain RRSPs)	MI 45-105 (Limited to certain RRSPs)	MI 45-105 (Limited to certain RRSPs)	MI 45-105 (Limited to certain RRSPs)	OSC Rule 45-501: s. 2.11	OSC Rule 45-501: s. 2.11	No analogous provision	No analogous provision	No analogous provision	No analogous provision
2.42	Schedule III Banks - Evidence of Deposit	No analogous provision	No analogous provision	No analogous provision	No analogous provision	No analogous provision	No analogous provision	MSA: s. 19(1)(c)	MSA: s. 58(1)(a)	No analogous provision	No analogous provision	QSA: s. 3 9°	QSA: s. 3 9°	No analogous provision	No analogous provision

National Instrument 45-106 *Prospectus and Registration Exemptions*

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NI 45-106															
Section #	**Exemption**	**British Columbia**		**Alberta**		**Saskatchewan**		**Manitoba**		**Ontario**		**Quebec**		**Nova Scotia**	
		Registration Exemption	**Prospectus Exemption**	**Registration Exemption**	**Prospectus Exemption**	**Registration Exemption**	**Prospectus Exemption**	**Registration Exemption**	**Prospectus Exemption**	**Registration Exemption**	**Prospectus Exemption**	**Registration Exemption**	**Prospectus Exemption**	**Registration Exemption**	**Prospectus Exemption**
2.43	Conversion, Exchange, or Exercise	BCSA: s. 45(2)(8)(ii), s. 45(2)(12)(iii), and MI 45-105: s. 2.3(1)	BCSA: s. 74(2)(7)(ii), s. 74(2)(11)(iii) MI 45-105: s. 2.3(2)	ASA: s. 86(1)(m)(iii) & MI 45-105: s. 2.3(1)	ASA: s. 131(1)(f)(iii) & MI 45-105: s. 2.3(2)	SSA: s. 39(1)(m)(iii), (iv)	SSA: s. 81(1)(f)(iii), (iv)	MSA: s. 19(1)(h), 19(1)(h.1), 19(1)(h.2)	MSA: s. 58(1)(b)	OSA: s. 35(1)12(iii), s. 35(1)14(ii), OSC Rule 45-501: s. 2.6, s. 2.7	OSA: s. 72(1)(f)(iii), s. 72(1)(h)(ii), OSC Rule 45-501: s. 2.6, s. 2.7	QSA: s. 155.1 2°	QSA: s. 52 1° and 52 4°	NSSA: s. 41(1)(m)(iii) and 41(1)(o)(ii), Blanket Order No. 38	NSSA: s. 77(1)(f)(iii) and 77(1)(h)(ii), Blanket Order No. 38
Part 3: Regisration Only Exemptions															
3.1	Registered Dealer	BCSA: s. 45(2)(7)		ASA: s. 86(1)(j)		SSA: s. 39(1)(j)		MSA: s. 19(1)(g)		OSA: s. 35(1)10		QSA: s. 155.1 1°		NSSA: s. 41(1)(j)	
3.2	Exchange Contract	BCSA: s. 47		ASA: s. 88		SSA: s. 39.1		No analogous provision		No analogous provision		No analogous provision		No analogous provision	
3.3	Isolated Trade	BCSA: s.45(2)(3)		ASA: s. 86(1)(b)		SSA: s. 39(1)(b)		MSA: s. 19(1)(b)		OSA: s. 35(1)2		No analogous provision		NSSA: s. 41(1)(b)	
3.4	Estates, Bankruptcies, and Liquidations	BCSA: s. 45(2)(1)(i)-(vi)		ASA: s. 86(1)(a)		SSA: s. 39(1)(a)		MSA: s. 19(1)(a)		OSA: s. 35(1)1, Ont. Reg. 1015: s.151(b)		QSA: s. 155.1 5°, 3 8°		NSSA: s. 41(1)(a)	
3.5	Employees of Registered Dealer	No analogous provision		ASA: s. 86(1)(h)		SSA: s. 39(1)(h)		MSA: s.19(1)(e)		OSA: s. 35(1)8		No analogous provision		NSSA: s. 41(1)(h)	
3.6	Small Security Holder Selling and Purchase Arrangements	NI 32-101: s. 2.1		NI 32-101		NI 32-101		Orders 162/87 (TSE) and 410/87 (ME)		NI 32-101		NI 32-101		NI 32-101	
3.7	Adviser	BCSA: s. 44(2)		ASA: s. 85		SSA: s. 38		18(a), (b), (c) and (d)		OSA: s. 34(a-d)		QSA: s. 156		NSSA: s. 40	
3.8	Investment Dealer Acting as Portfolio Manager	BCSC Rules: s. 86		ASC General Rules: s. 65		SReg.: s. 60		No analogous provision		Ont. Reg. 1015: s.148		QSR: s. 194		NS Regs: s. 77	
Part 4: Control Block Distributions															

National Instrument 45-106 *Prospectus and Registration Exemptions*

Table of Concordance: British Columbia to Nova Scotia

This table has been prepared as a reference tool to assist users of NI 45-106. This table should be viewed as guidance only and should not be considered or relied upon as legal advice.

NI 45-106															
Section #	**Exemption**	**British Columbia**		**Alberta**		**Saskatchewan**		**Manitoba**		**Ontario**		**Quebec**		**Nova Scotia**	
		Registration Exemption	**Prospectus Exemption**	**Registration Exemption**	**Prospectus Exemption**	**Registration Exemption**	**Prospectus Exemption**	**Registration Exemption**	**Prospectus Exemption**	**Registration Exemption**	**Prospectus Exemption**	**Registration Exemption**	**Prospectus Exemption**	**Registration Exemption**	**Prospectus Exemption**
4.1	Control Block Distributions		NI 62-101		NI 62-101		NI 62-101		NI 62-101		NI 62-101		No analogous provision		NI 62-101
4.2	Trades by a Control Person After a Take-Over Bid		No analogous provision		ASC General Rules: s. 123.1		Sreg.: s. 99		No analogous provision		OSC Rule 45-501: s. 2.4		No analogous provision		NS Regs: s. 127(t)
Part 5: Offerings by TSX Venture Exchange Offering Document															
5.2	TSX Venture Exchange Offering		BCI 45-509: s. 2		ASC Blanket Order 45-507, Prospectus Exemption Only		SFSC GRO 45-910, Prospectus Exemption Only		MSA: s. 58(3)(b), 58(3)(c), Prospectus Exemption Only		No analogous provision		No analogous provision		No analogous provision

National Instrument 45-106 *Prospectus and Registration Exemptions*

Table of Concordance: British Columbia to Nova Scotia

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NI 45-106															
Section #	**Exemption**	**British Columbia**		**Alberta**		**Saskatchewan**		**Manitoba**		**Ontario**		**Quebec**		**Nova Scotia**	
		Registration Exemption	**Prospectus Exemption**	**Registration Exemption**	**Prospectus Exemption**	**Registration Exemption**	**Prospectus Exemption**	**Registration Exemption**	**Prospectus Exemption**	**Registration Exemption**	**Prospectus Exemption**	**Registration Exemption**	**Prospectus Exemption**	**Registration Exemption**	**Prospectus Exemption**
Deleted Local Exemptions Not Being Carried Forward Upon the Coming Into Force of NI 45-106*															
		To be determined	To be determined	ASA: s. 86(1)(g), (k), (l), (hh), s.87(j), ASC (General) Rules: s.66(a)	ASC (General) Rules: s.122(a), (d)	SSA: s 39(1)(g), (k) , (l), (aa), (ii) and s. 39(2)(l)(m)(n)(p)	SSA: s. 81(1)(w), (x), (ff) and s. 82(1)(a) as it relates to the registration exemptions, (b), (c), (d)	None	None	OSA: s. 34(e), s. 35(1)7, 11, 23, s.35(2)11, 12, 13, 15, Ont. Reg. 1015: s. 151 (c), (d), (f), OSC Rule 45-501: s. 2.1	OSA: s.73(1)(a) as it relates to s.35(2)11, 12, and 13, s.73(1)(b), s.73(1)(c), OSC Rule 45-501: s. 2.1	None	None	NSSA: s.41(1)(g), (k), (af), (ag), and (ak), s.41(2)(k) to (m), NS Regs.: s. 80	NSSA: s.77(1)(z), (aa) and (ae), s.78(1) as it relates to s.41(2)(k) to (m)

*The provisions included in this section refer to those exemptions which are currently available under the securities legislation of the local jurisdiction, but will not be carried forward in NI 45-106 and will not otherwise be available under the securities legislation of the local jurisdiction upon the coming into force of NI 45-106.

National Instrument 45-106 *Prospectus and Registration Exemptions*

Table of Concordance: New Brunswick to Nunavut

This table has been prepared as a reference tool to assist users of NI 45-106. This table should be viewed as guidance only and should not be considered or relied upon as legal advice.

NI 45-106		Analogous Local Provisions											
Section #	Exemption	New Brunswick		PEI		Newfoundland and Labrador		Yukon Territory		Northwest Territories		Nunavut	
		Registration Exemption	Prospectus Exemption	Registration Exemption	Prospectus Exemption	Registration Exemption	Prospectus Exemption	Registration Exemption	Prospectus Exemption	Registration Exemption	Prospectus Exemption	Registration Exemption	Prospectus Exemption
Part 2: Prospectus and Registration Exemptions													
Division 1: Capital Raising Exemptions													
2.1	Rights Offering	NBSC Rule 45-501: s. 2.1(1)	NBSC Rule 45-501: s. 2.1 (2)	PEISA: s.2(3)(q)(i)	PEISA: s.13(1)(k)(i)	NLSA: s.36(1)(n)	NLSA: s.73(1)(h)	YSA s.2(h)	Registrar's Order March 1, 1980 s. 5	NWT Blanket Order #2: s. 3(f)	NWT Blanket Order #1: s. 3(f)	NU Blanket Order #3 s. 3(f)	NU Blanket Order #1 s. 3(f)
2.2	Reinvestment Plan	NBSC Rule 45-501: s. 2.2 (1)(2)(4)	NBSC Rule 45-501: s. 2.2 (3)	PEI Rule 45-506	PEI Rule 45-506	NLSA: s.36(1)(x) Blanket Order 13 (mutual Funds)	NLSA: s.54(3)(e) Blanket Order 13 (mutual funds)	YSA: s. 2(h)	No analogous provision	NWT Blanket Order #2: s. 3(x)	NWT Blanket Order #1: s. 3(x)	NU Blanket Order #3 s. 3(x)	NU Blanket Order #1 s. 3(x)
2.3	Accredited Investor	NBSC Rule 45-501: s. 2.3	NBSC Rule 45-501: s. 2.3	MI-45-103	MI 45-103	MI 45-103: s.5.1(1); NLSA s.36(1)(c) and (d)	MI 45-103: s.5.1(2), s.73(1)(a) and (c)	No analogous provision	No analogous provision	NWT Blanket Order #2: s. 3(a) and (r)	NWT Blanket Order #1: s. 3(a) and (r)	Blanket Order #3: s. 3(a) and (r)	Blanket Order #1: s. 3(a) and (r)
2.4	Private Issuer	NBSC Rule 45-501: s. 2.4 (1)	NBSC Rule 45-501: s. 2.4(2)	MI-45-103 PEISA: s. 2(4)(h)	MI 45-103 PEISA: s. 14.1(a)	MI 45-103: s.2.1(1), NLSA: s.36(2)(j)	MI 45-103: s.2.1(2), NLSA: s.73(1)(a)	No analogous provision	No analogous provision	MI 45-103, NWT Blanket Order #2: s. 3(ii), (r) and (s), NWTSA: s. 2(g)	MI 45-103, NWT Blanket Order #1: s. 3(ii)	MI 45-103, NU Blanket Order #3: s. 3(ii), (r) and (s), NUSA: s. 2(g)	MI 45-103, NU Blanket Order #1: s. 3(ii)
2.5	Family, Friends and Business Associates	NBSC Rule 45-501: s. 2.5 (1)	NBSC Rule 45-501: s. 2.5 (2)	MI 45-103	MI 45-103	MI 45-103: s.3.1(1)	MI 45-103: s.3.1(2)	No analogous provision	No analogous provision	NWT Blanket Order #2: s. 3(s)	NWT Blanket Order #1: s. 3(s)	NU Blanket Order #3: s. 3(s)	Blanket Order #1: s. 3(s)
2.7	Family, Founder and Control Person - Ontario	No analogous provision	No analogous provision	No analogous provision	No analogous provision	No analogous provision	No analogous provision	No analogous provision	No analogous provision	No analogous provision	No analogous provision	No analogous provision	No analogous provision
2.8	Affiliates	NBSC Rule 45-501: s. 2.6 (1)	NBSC Rule 45-501: s. 2.6 (2)	No analogous provision	No analogous provision	No analogous provision	No analogous provision	No analogous provision	No analogous provision	No analogous provision	No analogous provision	No analogous provision	No analogous provision
2.9	Offering Memorandum	NBSC Rule 45-501: s. 2.7 (1)	NBSC Rule 45-501: s. 2.7 (2)	MI 45-103	MI 45-103	MI 45-103: s.4.1(1)	MI 45-103: s.4.1(2)	No analogous provision	No analogous provision	MI 45-103	MI 45-103, NWT Blanket Order #1: s. 3(r)	MI 45-103	MI 45-103, NU Blanket Order #1: s. 3(r)
2.10	Minimum Amount Investment	NBSC Rule 45-501: s. 2.8 (1)	NBSC Rule 45-501: s. 2.8 (2)	PEISA: s. 2(3)(d)	PEISA: s. 13(1)(c)	NLSA: s. 36(1)(e)	NLSA: s. 73(1)(d)	No analogous provision	No analogous provision	NWT Blanket Order #2: s. 3(c)	NWT Blanket Order #1: s. 3(c)	NU Blanket Order #3: s. 3(c)	NU Blanket Order #1: s. 3(c)

National Instrument 45-106 *Prospectus and Registration Exemptions*

Table of Concordance: New Brunswick to Nunavut

This table has been prepared as a reference tool to assist users of NI 45-106. This table should be viewed as guidance only and should not be considered or relied upon as legal advice.

NI 45-106		Analogous Local Provisions											
Section #	Exemption	New Brunswick		PEI		Newfoundland and Labrador		Yukon Territory		Northwest Territories		Nunavut	
		Registration Exemption	Prospectus Exemption	Registration Exemption	Prospectus Exemption	Registration Exemption	Prospectus Exemption	Registration Exemption	Prospectus Exemption	Registration Exemption	Prospectus Exemption	Registration Exemption	Prospectus Exemption
Division 2: Transaction Exemptions													
2.11	Business Combination and Reorganization	NBSC Rule 45-501: s. 2.9 (1)	NBSC Rule 45-501: s. 2.9 (2)	PEI Rule 45-502 and PEISA: s. 2(3)(k), s. 2(3)(j)(ii)	PEI Rule 45-502 and PEISA: s. 13(1)(f) s. 13(1)(e)(ii)	NLSA: s. 36(1)(n)(ii), 36(1)(n)(o), Blanket Order 48	NLSA: s. 73(1)(f)(ii), 73(1)(i), Blanket Order 48	YSA: s. 2(i)	Registrar's Order March 1, 1980: s. 6	NWT Blanket Order #2: s. 3(e)(ii) and (g), NWTSA: s. 2(i) and (j)	NWT Blanket Order #1: s. 3(e)(ii) and (g)	NU Blanket Order #3: s. 3(e)(ii) and (g), NUSA: s. 2(i) and (j)	NU Blanket Order #1: s. 3(e)(ii) and (g)
2.12	Asset Acquisition	NBSC Rule 45-501: s. 2.10 (1)	NBSC Rule 45-501: s. 2.10 (2)	No analogous provision	PEISA: s. 13(1)(g)	NLSA: s. 36(1)(r)	NLSA: s. 77(1)(l)	No analogous provision	No analogous provision	NWT Blanket Order #2: s. 3(k)	NWT Blanket Order #1: s. 3(k)	NU Blanket Order #3: s. 3(k)	NU Blanket Order #1: s. 3(k)
2.13	Petroleum, Natural Gas and Mining Properties	NBSC Rule 45-501: s. 2.11 (1)	NBSC Rule 45-501: s. 2.11 (2)	No analogous provision	No analogous provision	NLSA: s. 36(2)(n)	NLSA: s. 73(1)(m)	YSA s. 2(k)	Registrar's Order March 1, 1980 s. 16	NWT Blanket Order #2: s. 3(l)	NWT Blanket Order #1: s. 3(l)	NU Blanket Order #3: s. 3(l)	NU Blanket Order #1: s. 3(l)
2.14	Securities for Debt	NBSC Rule 45-501: s. 2.12 (1)	NBSC Rule 45-501: s. 2.12 (2)	No analogous provision	No analogous provision	No analogous provision	No analogous provision	YSA s. 2(e)	Registrar's Order March 1, 1980 s. 1	NWTSA: s. 2(e)	No analogous provision	NUSA: s. 2(e)	No analogous provision
2.15	Issuer Acquisition or Redemption	NBSC Rule 45-501: s. 2.13 (1)	NBSC Rule 45-501: s. 2.13 (2)	No analogous provision	No analogous provision	NLSA: s. 36(1)(x)	NLSA: s. 54(3)(b)(ii)	No analogous provision	No analogous provision	NWT Blanket Order #2: s. 3(j)	NWT Blanket Order #1: s. 3(j)	NU Blanket Order #3: s. 3(j)	NU Blanket Order #1: s. 3(j)
2.16	Take-over Bid and Issuer Bid	NBSC Rule 45-501: s. 2.14 (10	NBSC Rule 45-501: s. 2.14 (2)	PEI Rule 45-510	PEI Rule 45-510	NLSA: s. 36(1)(p) and (q)	NLSA: s. 73(1)(j) and (k)	C.O. 1979/155 s. 1(b)	Registrar's Order March 1, 1980 s. 6	NWT Blanket Order #2: s. 3(h) and (i)	NWT Blanket Order #1: s. 3(h) and (i)	NU Blanket Order #3: s. 3(h) and (i)	NU Blanket Order #1: s. 3(h) and (i)
2.17	Offer to Acquire to Security Holder Outside Local Jurisdiction	NBSC Rule 45-501: s. 2.15 (1)	NBSC Rule 45-501: s. 2.15 (2)	No analogous provision	No analogous provision	No analogous provision	No analogous provision	No analogous provision	No analogous provision	No analogous provision	No analogous provision	No analogous provision	No analogous provision
Division 3: Investment Fund Exemptions													
2.18	Investment Fund Reinvestment	NBSC Rule 45-501: s. 2.16 (1)	NBSC Rule 45-501: s. 2.16(3)	PEI Rule 45-508	PEI Rule 45-508	No analogous provision	No analogous provision	No analogous provision	No analogous provision	NWT Blanket Order #2: s. 3(y)	NWT Blanket Order #1: s. 3(y)	NU Blanket Order #3: s. 3(y)	NU Blanket Order #1: s. 3(y)
2.19	Additional Investment in Investment Funds	NBSC Rule 45-501: s. 2.17 (1)	NBSC Rule 45-501: s. 2.17 (2)	PEI Rule 45-512	PEI Rule 45-512	No analogous provision	No analogous provision	No analogous provision	No analogous provision	NWT Blanket Order #2: s. 3(z)	NWT Blanket Order #1: s. 3(z)	NU Blanket Order #3: s. 3(z)	NU Blanket Order #1: s. 3(z)

National Instrument 45-106 *Prospectus and Registration Exemptions*

Table of Concordance: New Brunswick to Nunavut

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NI 45-106		Analogous Local Provisions											
Section #	Exemption	New Brunswick		PEI		Newfoundland and Labrador		Yukon Territory		Northwest Territories		Nunavut	
		Registration Exemption	Prospectus Exemption	Registration Exemption	Prospectus Exemption	Registration Exemption	Prospectus Exemption	Registration Exemption	Prospectus Exemption	Registration Exemption	Prospectus Exemption	Registration Exemption	Prospectus Exemption
2.20	Private Investment Club	NBSC Rule 45-501: s. 2.18 (1)	NBSC Rule 45-501: s. 2.18 (2)	PEI Rule 45-505	PEI Rule 45-505	NLSA: s. (36(2)(c)	NLSA: s. 74(1)(a)	No analogous provision	No analogous provision	NWT Blanket Order #2: s. 3(cc)	NWT Blanket Order #1: s. 3(cc)	NU Blanket Order #3: s. 3(cc)	NU Blanket Order #1: s. 3(cc)
2.21	Private Investment Fund - Loan and Trust Pools	NBSC Rule 45-501: s. 2.19 (1)	NBSC Rule 45-501: s. 2.19 (2)	No analogous provision	No analogous provision	NLSA: s. 36(2)(c)	NLSA: s. 74(1)(a)	No analogous provision	No analogous provision	NWT Blanket Order #2: s. 3(jj)	NWT Blanket Order #1: s. 3(jj)	NU Blanket Order #3: s. 3(jj)	NU Blanket Order #1: s. 3(jj)
Division 4: Employee, Executive Officer, Director and Consultant Exemptions													
2.24	Employee, Executive Officer, Director, and Consultant	NBSC Rule 45-501: s. 2.22 (1) (2) (3)	NBSC Rule 45-501: s. 2.22 (4)	PEISA: s. 2(3)(1), MI 45-105: s. 2.1(1)	PEISA: s. 13(1)(h), MI 45-105: s. 2.1(2)	NLSA: s. 36(1)(s), MI 45-105: s. 2.1(1)	NLSA: s. 74(1)(n), MI 45-105: s. 2.1(2)	MI 45-105: s. 2.1(1)	MI 45-105: s. 2.1(2)	MI 45-105: s. 2.1(1), NWT Blanket Order #2: s. 3(n)	MI 45-105: s. 2.1(2), NWT Blanket Order #1: s. 3(n)	MI 45-105: s. 2.1(1), NU Blanket Order #3: s. 3(n)	MI 45-105: s. 2.1(2), NU Blanket Order #1: s. 3(n)
2.26	Trades Among Current or Former Employees, Executive Officers, Directors, or Consultants of a Non-Reporting Issuer	NBSC Rule 45-501: s. 2.25 (1) (2)	NBSC Rule 45-501: s. 2.25 (3)	MI 45-105: s. 2.2(1)	MI 45-105: s. 2.2(2)	MI 45-105: s. 2.2(1)	MI 45-105: s. 2.2(2)	MI 45-105: s. 2.2(1)	MI 45-105: s. 2.2(2)	MI 45-105: s. 2.2(1)	MI 45-105: s. 2.2(2)	MI 45-105: s. 2.2(1)	MI 45-105: s. 2.2(2)
2.27	Permitted Transferees	NBSC Rule 45-501: s. 2.26 (1) (2) (3)	NBSC Rule 45-501: s. 2.26 (4)	MI 45-105: s. 2.4(1) , (2)	MI 45-105: s. 2.4(3)	MI 45-105: s. 2.4(1), (2)	MI 45-105: s. 2.4(3)	MI 45-105: s. 2.4(1), (2)	MI 45-105: s. 2.4(3)	MI 45-105: s. 2.4(1), (2)	MI 45-105: s. 2.4(3)	MI 45-105: s. 2.4(1), (2)	MI 45-105: s. 2.4(3)
2.28	Resale - Non-reporting Issuer	NBSC Rule 45-501: s. 2.27		MI 45-105: s. 3.2		MI 45-105: s. 3.2		MI 45-105: s. 3.2		MI 45-105 : s.3.2		MI 45-105: s.3.2	
2.29	Issuer Bid	NBSC Rule 45-501: s. 2.28 Issuer Bid Exemption Only		MI 45-105: s. 4.1, Issuer Bid Exemption Only		MI 45-105: s. 4.1, Issuer Bid Exemption Only		MI 45-105: s. 4.1, Issuer Bid Exemption Only		MI 45-105: s.4.1, NWT Blanket Order #2: s. 3(i), Issuer Bid Exempton Only		MI 45-105: s.4.1, NU Blanket Order #3: s. 3(i), Issuer Bid Exemption Only	
Division 5: Miscellaneous Exemptions													
2.30	Incorporation or Organization	NBSC Rule 45-501: s. 2.29 (1) (2)	NBSC Rule 45-501: s. 2.29 (3)	No analogous provision	No analogous provision	NLSA: s. 36(1)(t)	NLSA: s. 73(1)(o)	No analogous provision	No analogous provision	NWT Blanket Order #2: s. 3(o)	NWT Blanket Order #1: s. 3(o)	NU Blanket Order #3: s. 3(o)	NU Blanket Order #1: s. 3(o)
2.31	Isolated Trade by Issuer	NBSC Rule 45-501: s. 2.30 (1)	NBSC Rule 45-501: s. 2.30 (2)	PEISA: s. 2(3)(b)	PEISA: s. 13(1)(b)	NLSA: s. 36(1)(b)	NLSA: s. 73(1)(b)	YSA: s. 2(c)	Registrar's Order March 1, 1980 s. 1	NWT Blanket Order #2: s. 3(b)	NWT Blanket Order #1: s. 3(b)	NU Blanket Order #3: s. 3(b)	NU Blanket Order #1: s. 3(b)

National Instrument 45-106 *Prospectus and Registration Exemptions*

Table of Concordance: New Brunswick to Nunavut

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NI 45-106		Analogous Local Provisions											
Section #	Exemption	New Brunswick		PEI		Newfoundland and Labrador		Yukon Territory		Northwest Territories		Nunavut	
		Registration Exemption	Prospectus Exemption	Registration Exemption	Prospectus Exemption	Registration Exemption	Prospectus Exemption	Registration Exemption	Prospectus Exemption	Registration Exemption	Prospectus Exemption	Registration Exemption	Prospectus Exemption
2.32	Dividends	NBSC Rule 45-501: s. 2.31 (1) (2)	NBSC Rule 45-501: s. 2.31 (3)	PEISA: s. 2(3)(j)(i), s. 2(3)(p)	PEISA: s. 13(1)(e)(i),s. 13(1)(j)	NLSA: s. 36(1)(l)(i) and 36(1)(m)	NLSA: s. 73(1)(f)(i) and 73(1)(g)	YSA: s. 2(h)	Registrar's Order March 1, 1980 s. 5(a)	NWT Blanket Order #2: s. 3(e)(i) and NWTSA: s. 2(h)	NWT Blanket Order #1: s. 3(e)(i)	NU Blanket Order #3: s. 3(e)(i) and NUSA: s. 2(h)	NU Blanket Order #1: s. 3(e)(i)
2.33	Trade to Lender by Control Person for Collateral	NBSC Rule 45-501: s. 2.32 (1)	NBSC Rule 45-501: s. 2.31 (2)	PEI Rule 45-504	PEISA: s. 13(1)(d)	NLSA: s. 36(1)(f)	NLSA: s. 73(1)(e)	No analogous provision	No analogous provision	NWT Blanket Order #2: s. 3(d) and NWTSA: s. 2(e)	NWT Blanket Order #1: s. 3(d)	NU Blanket Order #3: s. 3(d) and NUSA: s. 2(e)	NU Blanket Order #1: s. 3(d)
2.34	Acting as Underwriter	NBSC Rule 45-501: s. 2.33 (1)	NBSC Rule 45-501: s. 2.33 (2)	PEISA: s. 2(3)(g)	PEI Rule 45-509	NLSA: s. 36(1)(i)	NLSA: s. 73(1)(r)	No analogous provision	Registrar's Order March 1, 1980 s.4	NWT Blanket Order #2: s. 3(v)	NWT Blanket Order #1: s. 3(v)	NU Blanket Order #3: s. 3(v)	NU Blanket Order #1 s. 3(v)
2.35	Guaranteed Debt	NBSC Rule 45-501: s. 2.34 (2)	NBSC Rule 45-501: s. 2.34 (3)	PEISA: s. 2(4)(b)	PEISA: s. 14.1(a), s. 14.1(a)	NLSA: s. 36(2)(a)	NLSA: s. 74(1)(a)	YSA: s. 2(i)	Registrar's Order March 1, 1980 s. 10	NWT Blanket Order #2: s. 3(aa)	NWT Blanket Order #1: s. 3(aa)	NU Blanket Order #3: s. 3(aa)	NU Blanket Order #1: s. 3(aa)
2.36	Short-term debt	NBSC Rule 45-501: s. 2.35 (1)	NBSC Rule 45-501: s. 2.35 (2)	PEISA: s. 2(4)(c)	PEISA: s. 14.1(a)	NLSA: s. 36(2)(d)	NLSA: s. 74(1)(a)	YSA: s. 2(e)	Registrar's Order March 1, 1980 s. 11	NWT Blanket Order #2: s. 3(dd) and NWTSA: s. 2(n)	NWT Blanket Order #1: s. 3(dd)	NU Blanket Order #3: s. 3(dd) and NUSA: s. 2(n)	NU Blanket Order #1: s. 3(dd)
2.37	Mortgages	NBSC Rule 45-501: s. 2.36 (1) (2)	NBSC Rule 45-501: s. 2.36 (3)	No analogous provision	No analogous provision	NLSA: s. 36(2)(e)	NLSA: s. 74(1)(a)	YSA: s. 2(l)	Registrar's Order March 1, 1980: s. 10	NWT Blanket Order #2: s. 3(ee) and NWTSA: s. 2(m)	NWT Blanket Order #1: s. 3(ee)	NU Blanket Order #3: s. 3(ee) and NUSA: s. 2(m)	NU Blanket Order #1: s. 3(ee)
2.38	Personal Property Security Act	NBSC Rule 45-501: s. 2.37 (1)	NBSC Rule 45-501: s. 2.37 (2)	PEISA: s. 2(4)(d)	PEISA: s. 14.1(a)	NLSA: s. 36(2)(f)	NLSA: s. 74(1)(a)	YSA: s. 2(n)	Registrar's Order March 1, 1980: s. 11	NWT Blanket Order #2: s. 3(ff) and NWTSA: s. 2(o)	NWT Blanket Order #1: s. 3(ff)	NU Blanket Order #3: s. 3(ff) and NUSA: s. 2(o)	NU Blanket Order #1: s. 3(ff)
2.39	Not for profit issuer	NBSC Rule 45-501: s. 2.38 (1)	NBSC Rule 45-501: s. 2.38 (2)	PEISA: s. 2(4)(e)	PEISA: s. 14.1(a)	NLSA: s. 36(2)(g)	NLSA: s. 74(1)(a)	YSA: s. 2(o)	Registrar's Order March 1, 1980: s. 12	NWT Blanket Order #2: s. 3(gg) and NWTSA: s. 2(p)	NWT Blanket Order #1: s. 3(gg)	NU Blanket Order #3: s. 3(gg) and NUSA: s. 2(p)	NU Blanket Order #1: s. 3(gg)
2.40	Variable Insurance Contract	NBSC Rule 45-501: s. 2.40 (1)	NBSC Rule 45-501: s. 2.40 (2)	PEI Rule 45-503	PEI Rule 45-503	NLSA: s. 54(3)(a)	NLSA: s. 36(1)(x)	No analogous provision	No analogous provision	NWT Blanket Order #2: s. 3(kk)	NWT Blanket Order #1: s. 3(kk)	NU Blanket Order #3: s. 3(kk)	NU Blanket Order #1: s. 3(kk)
2.41	RRSP/RRIF	NBSC Rule 45-501: s. 2.41 (1)	NBSC Rule 45-501: s. 2.41 (2)	PEI Rule 45-511	PEI Rule 45-511	No analogous provision	No analogous provision	No analogous provision	No analogous provision	NWT Blanket Order #2: s. 3(ll)	NWT Blanket Order #1: s. 3(ll)	NU Blanket Order #3: s. 3(ll)	NU Blanket Order #1: s. 3(ll)

National Instrument 45-106 *Prospectus and Registration Exemptions*

Table of Concordance: New Brunswick to Nunavut

This table has been prepared as a reference tool to assist users of NI 45-106. This table should be viewed as guidance only and should not be considered or relied upon as legal advice.

NI 45-106		Analogous Local Provisions											
Section #	Exemption	New Brunswick		PEI		Newfoundland and Labrador		Yukon Territory		Northwest Territories		Nunavut	
		Registration Exemption	Prospectus Exemption	Registration Exemption	Prospectus Exemption	Registration Exemption	Prospectus Exemption	Registration Exemption	Prospectus Exemption	Registration Exemption	Prospectus Exemption	Registration Exemption	Prospectus Exemption
2.42	Schedule III Banks - Evidence of Deposit	NBSC Rule 45-501: s. 2.42 (1)	NBSC Rule 45-501: s. 2.42 (2)	No analogous provision	No analogous provision	No analogous provision	No analogous provision	No analogous provision	No analogous provision	No analogous provision	No analogous provision	No analogous provision	No analogous provision
2.43	Conversion, Exchange, or Exercise	NBSC Rule 45-501: s. 2.43 (1) (2)	NBSC Rule 45-501: s. 2.43 (3)	PEI Rule 45-501, PEISA: s. 2(3)(j)(iii)	PEI Rule 45-501, PEISA: s. 13(1)(e)(iii)	NLSA: s. 36(1)(l)(iii) and 36(1)(n)(ii), Blanket Order 23	NLSA: s. 73(1)(f)(iii) and 73(1)(h)(ii), Blanket Order 23	YSA: s. 2(h)	Registrar's Order March 1, 1980: s. 5(c)	NWT Blanket Order #2: s. 3(e)(iii)	NWT Blanket Order #1: s. 3(e)(iii)	NU Blanket Order #3: s. 3(e)(iii)	NU Blanket Order #1: s. 3(e)(iii)
Part 3: Regisration Only Exemptions													
3.1	Registered Dealer	NBSC Rule 45-501: s. 3.1		PEISA: s. 2(3)(h)		NLSA: s. 36(1)(j)		YSA: s. 2(a)		NWTSA: s. 2(b)		NUSA: s. 2(b)	
3.2	Exchange Contract	No analogous provision		No analogous provision		No analogous provision		No analogous provision		No analogous provision		No analogous provision	
3.3	Isolated Trade	NBSC Rule 45-501: s. 3.2		PEISA: s.2(3)(b)		NLSA: s. 36(1)(b)		YSA: s. 2(a)		NWTSA: s. 2(a)		NUSA: s. 2(a)	
3.4	Estates, Bankruptcies, and Liquidations	NBSC Rule 45-501: s. 3.3		PEISA: s. 2(3)(a)		NLSA: s. 36(1)(a)		YSA: s. 2(f)		NWT Blanket Order #2: s. 3(mm) and NWTSA s. 2(f)		NU Blanket Order #3: s. 3(mm) and NUSA: s. 2(f)	
3.5	Employees of Registered Dealer	NBSC Rule 45-501: s. 3.4		PEISA: s. 2(3)(f)		NLSA: s. 36(1)(h)		No analogous provision		No analogous provision		No analogous provision	
3.6	Small Security Holder Selling and Purchase Arrangements	NBSC Rule 45-501: s. 3.5 (2)		NI 32-101		NI 32-101		NI 32-101		NI 32-101		NI 32-101	
3.7	Adviser	NBSC Rule 45-501: s. 3.6		PEISA: s. 2(5)		NLSA: s. 35		YSA: s. 30		NWT Blanket Order #2: s. 2		NU Blanket Order #3: s. 2	
3.8	Investment Dealer Acting as Portfolio Manager	NBSC Rule 45-501: s. 3.7		PEISA Reg: s. 48		NL Reg.: s. 133		YSA: s. 30		No analogous provision		No analogous provision	

National Instrument 45-106 *Prospectus and Registration Exemptions*

Table of Concordance: New Brunswick to Nunavut

This table has been prepared as a reference tool to assist users of NI 45-106. This table should be viewed as guidance only and should not be considered or relied upon as legal advice.

NI 45-106		Analogous Local Provisions											
Section #	Exemption	New Brunswick		PEI		Newfoundland and Labrador		Yukon Territory		Northwest Territories		Nunavut	
		Registration Exemption	Prospectus Exemption	Registration Exemption	Prospectus Exemption	Registration Exemption	Prospectus Exemption	Registration Exemption	Prospectus Exemption	Registration Exemption	Prospectus Exemption	Registration Exemption	Prospectus Exemption
Part 4: Control Block Distributions													
4.1	Control Block Distributions		NBSC Rule 45-501: s. 4.1 (3)		No analogous provision		NI 62-101		No analogous provision		NWT Blanket Order #1: s. 3(q)		NU Blanket Order #1: s. 3(q)
4.2	Trades by a Control Person After a Take-Over Bid		NBSC Rule 45-501: s. 4.2		No analogous provision		NL Regs: s. 15(1)		No analogous provision		No analogous provision		No analogous provision
Part 5: Offerings by TSX Venture Exchange Offering Document													
5.2	TSX Venture Exchange Offering		NBSC Rule 45-501: s. 5.2		No analogous provision		No analogous provision		No analogous provision		NWT Blanket Order #1: s. 2(c)		NU Blanket Order #1: s. 2(c)
Deleted Local Exemptions Not Being Carried Forward Upon the Coming Into Force of NI 45-106*													
		None	None	PEISA: s.2(3)(e), (m), (n), s.2(4)(i)	PEISA: s.14.1(a) as it relates to s.2(4)(i), s.13(1)(i)	NLSA: s. 36(1)(g)(k)(z)and (cc), s. 36(2)(k)(l)and(m)	NLSA: s.74(1) as it relates to s. 36(2)(k)(l) and (m)	None	None	None	None	None	None

*The provisions included in this section refer to those exemptions which are currently available under the securities legislation of the local jurisdiction, but will not be carried forward in NI 45-106 and will not otherwise be available under the securities legislation of the local jurisdiction upon the coming into force of NI 45-106.

List of Commenters
PROPOSED NATIONAL INSTRUMENT 45-106
Request for Comment December 17, 2004

	Commenter	Name	Date
1.	Alternative Investment Management Association	James McGovern	March 17, 2005
2.	Association of Canadian Pension Management (ACPM/ACARR) NI 45-106	Stephen Bigsby	March 23, 2005
3.	Association of Canadian Pension Management (ACPM/ACARR) OSC Revised Rule 45-501	Stephen Bigsby	March 23, 2005
4.	Association of Canadian Pension Management (ACPM/ACARR) CSA Notice 81-405	Stephen Bigsby Keith Douglas	March 23, 2005
5.	Barclays Global Investors	Rajiv Silgardo	March 9, 2005
6.	Blaney McMurtry	Michael J. Bennett	March 16, 2005
7.	Borden Ladner Gervais	Securities and Capital Markets Group	March 21, 2005
8.	Canadian Institute of Mortgage Brokers and Lenders (CIMBL)	Mark Webb Senior Director Professional Affairs,	April 8, 2005
9.	Canadian Listed Company Association	D. Bruce McLeod, P. Eng. Donald A. Gordon, CFA	March 17, 2005
10.	Credit Union Central of British Columbia	Rowland Kelly	March 7, 2005
11.	Davies Ward Phillips & Vineberg LLP	Robert S. Murphy	March 17, 2005
12.	DE Capital Partners Inc.	J. Stevenson	April 5, 2004
13.	Desjardins Securities	Jeffrey F. Olin	March 8, 2005

	Commenter	Name	Date
14.	Firm Capital Corporation	Eli Dadouch President and CEO	March 30, 2005
15.	Foremost Financial Corporation	Ivan Stone, President	April 6, 2005
16.	Goodmans LLP	David Matlow	March 8, 2005
17.	Heathbridge Capital Management Ltd.	Robert F. Richards, CFA Richard M. Tattersall, CFA	March 16, 2005
18.	The Investment Funds Institute of Canada	John W. Murray	March 17, 2005
19.	McDougall Gauley	Bill Nickel	March 21, 2005
20.	Ogilvy Renault	Tracey Kernahan "Ogilvy Renault"	March 16, 2005
21.	Ontario Strategic Infrastructure Financing Authority (OSIFA)	Dermot P. Muir	March 16, 2005
22.	Osler, Hoskin & Harcourt LLP	Janet Salter	March 18, 2005
23.	Osler, Hoskin & Harcourt LLP	Ward Sellers et al.	March 22, 2005
24.	RBC Financial Group	Shane Pollock	March 17, 2005
25.	Romspen Investment Corporation	Wes Roitman, CEO	April 7, 2005
26.	Securities Transfer Association of Canada	Richard M. Barnowski Secretary-Treasurer	February 21, 2005
27.	Stikeman Elliott	Simon Romano	December 20, 2004
28.	TD Asset Management		March 17, 2005
29.	TSX Markets and TSX Venture Exchange	Rik Parkhill and Linda Hohol	March 17, 2005
30.	Van Arbor Asset Management Ltd.	Andrew Parkinson	March 16, 2005
31.	Vector Financial Services Limited	Frank Laurie President	April 7, 2005

Alternative Investment Management Association (AIMA)

The Forum for Hedge Funds, Managed Futures and Managed Currencies

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March 17, 2005

British Columbia Securities Commission
Alberta Securities Commission
Saskatchewan Financial Services Commission
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
Nova Scotia Securities Commission
Prince Edward Island Securities Office
Securities Commission of Newfoundland and Labrador
Registrar of Securities, Department of Justice, Government of the Northwest Territories
Registrar of Securities, Legal Registries Division, Department of Justice, Government of Nunavut
Registrar of Securities, Government of Yukon

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Senior Legal Counsel
Alberta Securities Commission
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Calgary, Alberta
T2P 3C4

- and -

c/o Anne Marie Beaudoin
Directrice du secrétariat
Autorité des marchés financiers
Tour de la Bourse
800 square Victoria
C.P. 246, 22e étage
Montréal, Québec
H4Z 1G3

Dear Sirs/Mesdames:

Re: AIMA Canada's Comments on Proposed National Instrument 45-106 *Prospectus and Registration Exemptions*

This letter is being written on behalf of the Canadian chapter of the Alternative Investment Management Association ("AIMA") and its Members to provide our comments to you on proposed National Instrument No. 45-106 *Prospectus and Registration Exemptions* ("NI 45-106").

AIMA was established in 1990 as a direct result of the growing importance of alternative

investments in global investment management. AIMA is a not-for-profit educational and research body that specifically represents practitioners in hedge fund, futures fund and currency fund management – whether managing money, providing a service such as prime brokerage, administration, legal or accounting. AIMA's global membership comprises over 700 corporate members, throughout 43 countries, including many of the leading investment managers, professional advisers and institutional investors. AIMA's Canadian chapter, established in 2003, now has over 60 corporate members.

One of the objectives of AIMA is to ensure the representation and integration of skill-based investments into mainstream investment management. AIMA works closely with regulators and interested parties in order to better promote and control the use of alternative investments.

General Comments

We would like to applaud the CSA for its continuous efforts to harmonize securities regulation across Canada and the spirit in which proposed NI 45-106 was developed. We have concerns, however, that NI 45-106 falls short of the CSA's goal of creating "a national harmonized prospectus and registration exemptions instrument". In particular, we are concerned with the number of carve-outs and exceptions set out in the proposed instrument and are disappointed that the CSA have been unable to agree on a number of proposed exemptions.

The alternative investment fund industry in Canada has had to rely on the prospectus and registration exemptions set out in the various provincial statutes, regulations and instruments, as the investment restrictions set out in National Instrument 81-102 do not permit the diverse alternative investment strategies employed by our Members. It has been a source of continued frustration for our Members to navigate the patchwork of securities regulation currently in place in Canada when marketing and selling alternative investment funds to Canadian investors. We believe that the confusion caused by the differences in securities regulation in Canada is not in the best interests of the investing public, nor is it in the best interest of market participants. Because of the differences and inconsistencies in regulatory approach in each of the provinces to date, investment funds relying on the prospectus and regulation exemption regime have either had to incur disproportionate costs in ensuring regulatory compliance in all jurisdictions in which they wish to offer their securities or inadvertently assume certain regulatory risk in attempting to create and offer a "one size fits all" investment fund product for all Canadian investors. Canadian investors from the smaller markets often are not given access to investment opportunities available to investors in the larger markets, because the additional cost of ensuring compliance in each respective jurisdiction discourages many fund managers from offering their product in the smaller markets. A truly harmonized prospectus and registration exemption instrument would help address that unfortunate circumstance.

With the foregoing in mind, we offer the following specific comments on the proposed instrument:

Local Exemption Rules

We are disappointed that OSC Rule 45-501 and certain other local exemption rules will continue, even after the adoption by the CSA of NI 45-106. We are strongly of the view that the continuation of such local rules will undermine the purpose of NI 45-106, and we encourage the CSA to reconsider this approach.

Accredited Investors and Fully Managed Accounts

We applaud the OSC's decision to include fully managed accounts in the definition of

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accredited investor for the purpose of investing in mutual funds and other investment funds, and we support that change.

We also support the inclusion, in the definition of accredited investor, of "an investment fund that distributes or has distributed its securities only to persons … who are or were accredited investors at the time of the distribution". We believe however that it should apply, so long as investors from the relevant Canadian jurisdiction are or were accredited investors at the time of the distribution, without regard to the status of investors outside the jurisdiction. We do not believe that, if an investment fund has investors from other jurisdictions who have been issued securities of the fund in compliance with the regulatory requirements of the jurisdiction in which they reside, such investment fund should be precluded from investing in private placements in that jurisdiction pursuant to the accredited investor exemption. We believe that the policy behind this exemption is addressed so long as all investors from that jurisdiction are accredited investors. Alternatively, we would support an exemption that requires all Canadian investors to be accredited investors so long as the Fund is not required to confirm the status of the non-Canadian investors.

The Exemption for Family, Friends and Business Associates

We are disappointed with the OSC's decision to opt out of Section 2.5, which offers a prospectus and registration exemption for trades to family, friends and business associates. Like other issuers, hedge funds in their early stages often require a minimum amount of seed money which would permit the fund manager to launch a new investment fund with a view to building a track record on which the fund could then be marketed to a broader market. Historically, seed money has come from family, friends and business associates of the principals and promoters of a new issuer. We believe that the unavailability of this exemption in Ontario creates a barrier to entry which portfolio managers in the other provinces do not have. We strongly urge Ontario to adopt this exemption so as to permit Ontario portfolio managers who wish to start up their own investment fund, or simply wish to make an existing fund available to their family, friends and business associates, the same opportunity as is afforded to residents of the other provinces of Canada.

Offering Memorandum Exemption

We are also disappointed that Ontario has chosen not to adopt the offering memorandum exemption which is available in the other provinces. Furthermore, we would like to see an exemption which is available across Canada which would allow an investment fund to offer securities in reliance on this exemption. We believe that, with the minimum disclosure requirements of the exemption, regulatory concerns about ensuring that investors receive sufficient information on which to make their investment decision can be satisfied while at the same time allowing the issuer to avoid the significant costs of filing a prospectus and becoming a reporting issuer. We believe that the new disclosure rule set out in NI 81-106 will help ensure that there is continuous disclosure for investors in such products. We would also like to see a form requirement which is specific to investment funds as there are considerable differences between what is relevant to an investment fund and what is relevant to an investor in other types of issuers. AIMA would be happy to work with the CSA in developing the template for such a disclosure document.

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$150,000 Exemption

We applaud the harmonization of the minimum amount investment exemption set out in the various statutes and rules, the adoption by all of the CSA of this exemption and its availability to mutual funds and non-redeemable investment funds. We would ask, however, that this exemption also include *in specie* contributions that have a fair value of $150,000. We believe that, so long as the assets being contributed are consistent with an investment fund's investment objectives and restrictions and are valued in the same manner that all of the portfolio assets of the investment fund are valued, there can be no manipulation of the value of assets being contributed so as to enable the contributor to rely on the exemption.

Furthermore, we would encourage the CSA to consider allowing the $150,000 exemption to be sprinkled among investment funds that are managed by the same entity. We believe that the same rationale, which deems a person who has $150,000 to invest in a single investment to be sophisticated enough to not require a prospectus and not require the assistance of a registered dealer, can also be applied to an investor who invests in two or more funds managed by the same manager and thereby enjoy the benefits of diversification.

Additional Investments and Re-Investment

We urge the CSA to consider expanding the exemption set out in Sections 2.18 and 2.19 so as to permit an investment fund which has more than one class and series of units, where the value of the units of each such class and series is based on the same pool of portfolio assets, the flexibility to permit re-investment and/or additional investments in classes or series of the same investment fund other than the class or series originally purchased by the investor. Where classes and series are created solely for administrative purposes, to facilitate differing fee structures and the calculation of management and performance fees based on the value of an individual investor's investment in the Fund, there is no policy reason to treat an investment in one class or one series as being different from an investment in another class or another series of the same Fund.

Limited Market Dealers

We note that, despite the attempt by the CSA to develop a national harmonized prospectus and registration exemption regime, Ontario and Newfoundland continue to require certain market intermediaries who participate in a private placement of securities, which have otherwise been issued in reliance on certain registration exemptions, to be registered as limited market dealers. We question the policy or regulatory goal of such registration in light of the lack of proficiency, capital and insurance requirements which are imposed on such market intermediaries. We believe that this category of registration creates additional confusion in the marketplace and makes it difficult for an issuer to have a unified marketing and distribution plan for all of Canada.

We applaud the AMF's decision to permit issuers relying on certain prospectus exemptions to also have available to them parallel registration exemptions.

As participants in an industry which relies on the prospectus and registration exemption regime in Canada in distributing securities of investment funds, AIMA's Members are fully in support of all initiatives to harmonize prospectus and registration exemptions in Canada. Again, we applaud the spirit in which proposed NI 45-106 has been developed and encourage all members of the CSA to adopt a single set of rules and to make the Canadian market more accessible and more friendly to investors and market participants alike.

We appreciate the opportunity to provide the CSA with our views on this proposal. Please

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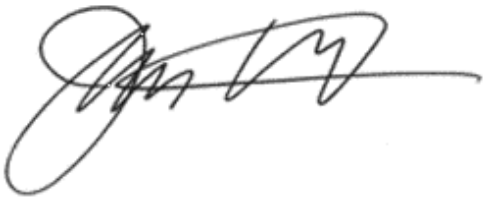
feel free to direct any questions or comments that you might have to any of the following members: Jim McGovern, Arrow Hedge Partners Inc. (416) 323-0477; Ron Kosonic, Borden Ladner Gervais LLP (416) 367-6621; or Gary Ostoich, McMillan Binch LLP (416) 865-7802.

Yours truly,

ALTERNATIVE INVESTMENT MANAGEMENT ASSOCIATION - CANADA CHAPTER (AIMA - Canada Chapter)



James McGovern, Chairman, AIMA Canada

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March 23, 2005

Alberta Securities Commission
British Columbia Securities Commission
Manitoba Securities Commission
New Brunswick Securities Commission
Securities Commission of Newfoundland and Labrador
Registrar of Securities, Department of Justice, Government of the Northwest Territories
Nova Scotia Securities Commission
Registrar of Securities, Legal Registries Division, Department of Justice, Government of Nunavut
Ontario Securities Commission
Prince Edward Island Securities Office
Autorité des marchés financiers
Saskatchewan Financial Services Commission
Registrar of Securities, Government of Yukon

Dear Sirs/Mesdames:

Re: Proposed National Instrument 45-106 *Prospectus and Registration Exemptions* (the "Proposed Rule")

The Association of Canadian Pension Management (ACPM) is the national voice of private and public sector pension plan sponsors in Canada as well as the professional advisory firms they retain and related stakeholders. The ACPM represents pension plans with $300 billion in assets and over 3 million plan members.

We are pleased to respond to your request for comments on the Proposed Rule. As the ACPM is committed to clarity in pension legislation, regulations and arrangements, we commend you on your efforts to achieve greater uniformity regarding exempt distributions.

This letter examines the various types of retirement and savings plans currently in use, and discusses how the Proposed Rule and the prospectus and registration exemptions proposed in CSA Notice 81-405 (the "CAP Exemption") can be revised to work better in the context of those plans.

1. General Comments

(a) The Need for Harmonization

As we noted in our comment letter on the CAP Exemption, which have attached for your ease of reference, it is essential that the exemptions available to pension funds and other capital accumulation plans be uniform across Canada. Uniformity across provinces and consistency across investment products will ensure that all investors have an equal level of effective protection.

Harmonization Across Jurisdictions – We strongly support uniformity across all jurisdictions in Canada. This will permit pension industry participants to understand more easily the securities law exemptions available to them, and permit service providers to design products that can be

offered in the same manner across Canada. There is no compelling reason for plans in different Canadian jurisdictions to be treated differently.

Harmonization Across Plans - In our view there are strong arguments in favour of harmonizing securities law exemptions for plans in an even broader sense than we propose in this letter. As we note below, sponsors of plans are subject to significant fiduciary responsibilities, and are not subject to the conflicts of interest inherent in the retail securities distribution model. Ideally, we would like to see these structural differences recognized in the exemptions.

(b) Categories of Plans

Our comments in this letter refer to "pension plans" and "pension funds", which are pension plans and pension funds that are regulated by a pension supervisory authority (for example the Office of the Superintendent of Financial Institutions Canada or the Financial Services Commission of Ontario). A pension plan is required by pension benefits statutes to have administrator, who is subject to specific fiduciary duties. The assets of pension plans must be invested in accordance with specific statute-imposed investment rules.

We also refer to "CAPs", which are capital accumulation plans subject to the Guidelines for Capital Accumulation Plans (the "CAP Guidelines") published in May 2004 by the Joint Forum of Financial Services Regulators. These include group registered retirement savings plans, deferred profit-sharing plans and registered education savings plans. The plan sponsor is not subject to the heightened standard of care imposed under pension legislation, but has specific responsibilities under the CAP Guidelines.

We use the term "plan" to refer to both pension plans and CAPs.

Our comments below are based on a division of plans into three categories.

Category 1. Pension plans where the sponsor or its investment advisor makes the investment decisions or the sponsor acts as an intermediary between the plan members and the issuer of the investment. This category consists mostly of defined benefit ("DB") pension plans, although there are also some defined contribution ("DC") pension plans in this category. It would also include corporate-sponsored CAPs covered by OSC Rule 32-503 *Registration and Prospectus Exemption for Trades by Financial Intermediaries in Mutual Fund Securities to Corporate-Sponsored Plans* ("OSC Rule 32-503").

Category 2. DC pension plans (other than those in Category 1) and CAPs that are not pension plans, in each case where the plan sponsor complies with the CAP Guidelines. Members make the investment decisions.

Category 3. CAPs where the plan sponsor does not comply with the CAP Guidelines.

2. The Accredited Investor Exemption

The Proposed Rule provides an exemption from the prospectus and registration requirements for a "pension fund" that "purchases as principal". It is currently unclear how that exemption applies to a pension plan. A pension plan is required to establish a pension fund which is held by a trustee, insurance company or other approved entity. The entity that holds the assets of the pension fund does not purchase as "principal" in the traditional sense of the word. In a DB pension plan, where the administrator or its agent makes the investment decisions and the plan

sponsor/employer bears all of the investment risk, there seems no doubt that the pension fund should be seen as an “accredited investor”.

Some plan sponsors/employers choose to retain investment responsibility even in a DC pension plan. We see this as analogous to investing the assets of a fully managed account. In a fully managed account, the investor bears the investment risk, but investment decisions are made by a sophisticated person. The Proposed Rule deems to be purchasing as principal certain persons who are acting on behalf of a fully managed account: see sections 2.3(3) and (5). If those persons are deemed to be purchasing as principal, so too should a pension fund where the investment decisions are made by administrator and not by the members. Accordingly, we believe that pension funds where the plan administrator or its investment advisor makes the investment decisions (Category 1 above) should have the benefit of the accredited investor exemption.

If members of a CAP deal only with the sponsor who, in turn, deals with the ultimate suppliers of the funds, then these CAPs should also be eligible for the accredited investor exemption. There is a convergence of interests between member and sponsor in these plans to ensure the same level of protection as with the more restrictive requirements imposed on retail funds sold directly to plan members.

By contrast, we believe that the accredited investor exemption should not be available to a CAP (Categories 2 and 3) where members make the investment decisions and deal directly with the fund supplier. These types of plans do not operate like fully managed accounts, and plan members need the protection offered by the CAP Guidelines or the prospectus and registration requirements.

We recommend that pension funds that fall into Category 1 be deemed to be purchasing as principal, so that it is clear that they have the benefit of the accredited investor exemption. Plans where members make the investment decisions when dealing directly with the fund supplier (Categories 2 and 3) should not be considered to be “accredited investors”.

3. The CAP Exemption

The CAP Exemption relates to the two categories of plans where members make investment decisions without the intervention of the plan sponsor. We continue to hold the views expressed in our earlier comment letter regarding the CAP Exemption. Most notably, as discussed above, we strongly believe that the CAP Guidelines and the CAP Exemption should both be amended to accommodate pooled funds.

The administrator of a pension plan is subject to a heightened statutory standard of care beyond the common law standard imposed on a fiduciary. A DC pension plan in which members make the investment decisions is also subject to the CAP Guidelines. In our view, if the administrator of a DC pension plan considers it prudent for the investment options include pooled funds, those pooled funds should be available to the members even though pooled funds are not currently permitted under the CAP Guidelines or the CAP Exemption. In the context of a pension plan, the heightened statutory standard of care makes the investor protections of a prospectus and dealer registration unnecessary. There can be no doubt that the administrator must ensure that plan members receive enough information to be able to make informed investment decisions. In addition, the plan will be registered with and subject to the supervision of the applicable pension supervisory authority.

Similarly, the CAP Guidelines impose obligations on the plan sponsor and service providers to the CAP. The CAP sponsor is required, among other things, to select the investment options that are appropriate for the CAP and to provide to CAP members the information and decision-making tools contemplated by the CAP Guidelines.

By contrast, if the plan sponsor does not adhere to the CAP Guidelines, the CAP members will not have the protection described above, and the prospectus and registration requirements should apply to protect the members.

We recommend that CAPs that fall into Category 2 have the benefit of the CAP Exemption. CAPs in Category 3, where members do not have the protection contemplated by the CAP Guidelines, should not be entitled to the CAP Exemption.

Once the CAP Exemption is revised and finalized, it should be added to the Proposed Rule.

4. Other Exemptive Provisions

In connection with the Proposed Rule, the Ontario Securities Commission proposes to transfer into OSC Rule 45-501 *Ontario Prospectus and Registration Exemptions* ("OSC Rule 45-501") the current content of OSC Rule 32-503.

If the approach described in this letter is followed, there will be no need to maintain the current content of OSC Rule 32-503, as such trades will be exempt under the Proposed Rule. We are therefore making this submission to the Ontario Securities Commission in a separate letter, in the context of their proposed amendments to OSC Rule 45-501. A copy of that letter is attached.

If our approach is not followed, we question why OSC Rule 45-501 is required in Ontario but not in any other jurisdiction.

5. Fees

As mentioned in our earlier comment letter on the CAP exemption, we believe that trades to plans should be exempt from the exempt trade reporting requirement, and that such trades also should not be subject to an activity fee or included for the purpose of calculating a capital markets participation fee. Tax-deferred retirement savings plans receive preferred treatment under the *Income Tax Act* (Canada) and other pieces of legislation for significant public policy reasons. We submit that such preferential treatment is also justified under securities regulation. Fees and reporting costs are ultimately borne by those who are trying to save for retirement. We submit that this is an unnecessary burden. In the context of DB plans, such costs only increase the funding problems facing plan sponsors.

6. Summary

As proposed above, we believe that securities law exemptions should be available to plans as follows:

Type of Plan	Exemption for Trades to the Plan
Pension funds where the sponsor or its agent makes the investment decisions and CAPs where the sponsor acts as an intermediary between the members and the issuer of the investment.	Accredited investor, with the fund deemed to be purchasing as principal.
CAPs that are pension plans or that comply with the CAP Guidelines.	Revised CAP exemption.
CAPs that are not pension plans and do not comply with the CAP Guidelines.	No exemption available.

If you have any questions in connection with our comments, please let us know. We would be happy to make further submissions on any issues that are of interest to you.

Yours truly,

The Association of Canadian Pension Management

(ORIGINAL SIGNED BY):

Stephen Bigsby
Executive Director

August 10, 2004

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Dear Sirs/Mesdames

Re: ***CSA Notice 81-405 – Request for Comment on Proposed Exemptions for Certain Capital Accumulation Plans***

The Association of Canadian Pension Management (ACPM) and the Pension Investment Association of Canada (PIAC) are pleased to jointly provide comments to the members of the Canadian securities administrators (CSA) on the proposed exemptions for certain capital accumulation plans (CAPs) published for comment by CSA Notice 81-405 on May 28, 2004.

ACPM and PIAC have been active participants throughout the past few years in the work to develop the Guidelines for Capital Accumulation Plans released by the Joint Forum of Financial Market Regulators on May 28. We are pleased that the Guidelines have been released in final form and reflect many of the views we have expressed over the years. We are also very pleased that the CSA have released the proposed exemptions for comment—the proposed exemptions are essential for the proper administration and implementation of the final Guidelines by industry participants.

Overall we support the work of the CSA, along with the other members of the Joint Forum of Financial Market Regulators, to promote a nationally harmonized regime for CAP sponsors, administrators and service providers, including managers of mutual funds that are investment choices for CAP participants. We believe that the final Guidelines for CAPs issued by the Joint Forum, when combined with the proposed CSA exemptions, will serve to clarify the obligations of CAP market participants and will result in more complete and consistent investor protection for participants in CAPs.

We have elected to provide our comments in the form of the attached memorandum and hope that the CSA will find our comments to be constructive.

We thank you again for the opportunity to work with you on this important initiative. We look forward to continuing to work with the CSA in finalizing the exemptions which are essential to the proper implementation of the final Guidelines.

Yours truly,

ORIGINAL SIGNED BY:

Stephen Bigsby, Executive Director

Association of Canadian Pension Management

Keith Douglas, General Manager

Pension Investment Association of Canada

CSA Notice 81-405

Request for Comment on Proposed Exemptions for Certain Capital Accumulation Plans

Joint Submission of ACPM and PIAC

August 10, 2004

Our comments on the proposed exemptions reinforce the fundamental principle for the regulation of CAPs that we urge the CSA to keep in mind. The regulation of CAPs must be harmonized across Canada and across industry sectors. It is essential that industry participants be able to easily understand the rules that apply to them. Those rules must be the same whether those industry participants and the participants in CAPs, are based in British Columbia, in Ontario, in Quebec or in any other province or territory in Canada. Similarly, the rules and the regulatory burden on industry participants should be the same whether the investment choices in a CAP are public mutual funds, pooled funds (that is, exempt mutual funds), segregated funds, GICs or any other type of security or investment product. By keeping the rules harmonized in these circumstances, participants in CAPs will have the same investor protection without regard to investment choice and province of residence.

Form of the Proposed Exemptions

1. As a preliminary matter, we wish to comment on the form the proposed exemptions will take in the various provinces and territories. In the CSA Notice, you state "In *most* provinces, we expect to adopt the proposed exemption in the form of a blanket exemption from the dealer registration and the prospectus requirements for certain trades in mutual fund securities". You then note that since the Ontario Securities Commission does not have authority to grant blanket exemptions, that market participants will still have to apply for exemptions in Ontario. You also note that the CSA is working on a national exemption rule and that you contemplate that *at some point* the proposed exemptions *might* be incorporated into that national instrument.

   We urge all members of the CSA to move towards a nationally uniform exemption. If the most expeditious way of accomplishing this objective in provinces that do not have the ability to grant blanket exemptions is to publish for comment a draft rule that is the same as the blanket exemptions granted in the other provinces and territories, we strongly recommend this be done. It will be most inefficient for industry participants to make applications for the expected relief and we wish to note our objections to this procedure proposed for Ontario market participants. We also strongly recommend that the CSA include this exemption in the anticipated national exemptions rule.

   If the OSC (and the other applicable provinces without the authority to grant blanket exemptions) does not publish a draft rule in the form of the proposed exemption, we encourage the OSC to explain which CAP participant the OSC expects to make the application—who does the OSC consider caught by the prospectus requirements (ie. the mutual funds, being the investment choices in the CAP? the CAP administrator? the CAP sponsor?) and the dealer requirements (ie. the CAP administrator? the CAP sponsor?). How will the application fees be levied? Can more than one issuer/CAP administrator/CAP sponsor apply in one application for identical relief?

Additional exemptions are needed to achieve full harmonization across Canada

2. In the CSA Notice, you note that in *some* CSA jurisdictions the information that is given to CAP participants *may* constitute an offering memorandum. You explain the situation under the laws of Saskatchewan and Nova Scotia, but do not provide conclusive views on the effect of these laws in that you use words such as "may constitute", "likely constitute" and "such as". It would be useful to understand definitively if other provinces will take similar positions in light of their regulation. For the reasons we provide below, we strongly recommend that the proposed exemption provide an additional exemption from all provincial/territorial legislation that may have this effect.

In our view as we outline above, it would be an inappropriate result for CAP participants in certain provinces to have different rights from the CAP participants in other provinces. Equally importantly, we submit that the Final Guidelines have been drafted on the premise and fully recognizing that traditional securities legislation and principles fit awkwardly with the relationships between CAP sponsors, CAP administrators, CAP participants and the issuers, together with the managers of those issuers, that are investment choices for CAPs.

The CAP participant does not rely on the information that is provided by the mutual funds or their managers in making an investment choice. The CAP participant is relying on the information being provided to him or her by the CAP administrator or sponsor. For the most part, the CAP administrator or sponsor picks appropriate investment choices and provides participants with the information contemplated in the Final Guidelines. In many cases, the investment choices are limited to a defined menu of choices. The CAP administrator or sponsor arranges for the investment choices, with the applicable mutual funds and their managers, asking for information from those entities, which it then packages appropriately to provide to the CAP participants. The mutual funds and their managers have an obligation, at law and also, in some cases, by contract with the CAP sponsor or administrator to provide accurate information to that entity. But the mutual funds and their managers do not provide information directly to the CAP participants, particularly since much of the contents of a conventional simplified prospectus would not apply to the circumstances that apply to the CAP participant.

The traditional securities legal analysis of a "chain" of responsibility between the mutual funds (as issuers of securities) and the ultimate investor (the CAP participant), in this way, has been broken. It would be inappropriate for securities legislation to contemplate any rights against the mutual funds directly by the CAP participant. Similarly, it is equally inappropriate for securities legislation to somehow apply to the CAP and deem it, or its sponsor, as akin to an "issuer" of securities. The CAP participant would have rights against the CAP administrator or sponsor, depending on the terms of the CAP and the relationships formed at law. In our view, the Final Guidelines are consistent with and substantiate this analysis.

We believe that the second question posed in the Notice is based on a traditional securities legal analysis, which we submit does not apply to the relationships formed with CAPs. You ask whether CAP participants should have recourse against an issuer of a security, which would mean the mutual funds (since the mutual funds are the only permitted issuers) and whether CAP participants should be given rights of withdrawal similar to those that apply when an investor purchases securities directly from those funds. Again, we submit that the traditional securities analysis does not apply to CAP relationships, which are significantly different from the traditional securities relationships.

In our view, granting the prospectus and dealer exemptions, along with the exemptions from any regulation dealing with offering memoranda, does not reduce investor protection for the CAP participants, particularly given the Final Guidelines and the CAP relationships at law.

Existing exemptions should be incorporated in the proposed exemptions

3. In order to achieve the overall harmonization goals we outline above, we recommend that the Alberta and Ontario securities commissions re-consider the existing exemptions provided by way of existing local rule and, unless there is a compelling reason to retain them in a separate rule, incorporate any provisions that are important to existing relationships into the proposed exemption. The Notice describes, without additional explanation, that the Alberta Commission is inclined to revoke its local rule, but that the Ontario Commission "expects to retain" its existing exemption, being OSC Rule 32-503 *Registration and Prospectus Exemption for Trades by Financial Intermediaries in Mutual Fund Securities to Corporate Sponsored Plans.*

   In our view, the Final Guidelines, when coupled with the proposed exemption, will serve to achieve the harmonization goals we believe are essential. It is not clear to us, whether a CAP that falls within the restricted confines of the existing Ontario rule, for example, would be required by law to follow the Final Guidelines. The exemptions provided in that rule do not have the same conditions as those proposed under the proposed exemptions. We believe that some industry participants may be legitimately relying on the Alberta and Ontario rules and submit that these exemptions should be incorporated into the proposed exemptions (to the extent they are not covered by the proposed exemptions) and made to apply on a national basis, so that the regime that applies to CAPs can be found in one place.

Comments on specific provisions of the proposed exemption

4. As a preliminary drafting matter, since the proposed exemptions will be used by industry participants who may not be familiar with terminology used by the CSA and defined in securities legislation, we recommend that the term "mutual fund" be explained in a companion policy to the proposed exemption. Readers of the proposed exemption should understand that the term "mutual fund" includes both publicly offered mutual funds, and also exempt mutual funds, which are more commonly referred to as "pooled funds".

5. It is not clear to us whether the CSA intend for the conditions to the prospectus and the registration exemptions to be identical to the expectations for CAP sponsors and administrators contained in the Final Guidelines. For example, are the conditions set forth in subsection 2.1(b) and (c) the same as, or in addition to, the provisions in the Final Guidelines? In our view, the proposed exemptions should link back to the Final Guidelines and should not add any new requirement from those contained in the Final Guidelines. Our overriding recommendation is that regulation of CAPs be harmonized—across Canada and across industry sectors. The fact that mutual funds are investment options should not give rise to additional requirements for CAP industry participants. We recommend that the proposed exemption refer to the Final Guidelines, without repeating the provisions. This will allow for the proposed exemption to stay in step with any changes to the Final Guidelines.

   If the CSA do not take the above approach, we recommend that any differences be explained and industry participants be given an opportunity to understand why the CSA is proposing different requirements when mutual funds are investment options under CAPs.

6. If the existing conditions are retained, we have the following comments on those conditions and on the other provisions in the proposed exemption.

Section 2.1

(a) Paragraphs (c) (iii) and (iv) use terminology that is different from current CSA regulation of investment funds. We recommend that (iii) be amended to refer to the fundamental investment objective of the mutual fund and that (iv) be amended to refer to the investment strategies of the mutual fund.

(b) Is the information contemplated to be provided by the plan sponsor under section 2.1, to be in writing? When is this information to be provided? In advance of making an investment choice?

(c) Paragraph (e) could more usefully refer back to the rules relating to calculation of performance by mutual funds contained in NI 81-102. The conditions currently contained in paragraph (e) are less precise than in NI 81-102 and we recommend uniformity in this regard.

(d) Paragraph (f) refers to "changes" in the mutual fund. What kind of changes? As you know, public mutual funds must disclose all "material" or "significant" changes (both those terms are defined under securities regulation) and cannot make "fundamental" changes without securityholder input. What is contemplated in paragraph (f)? We recommend further precision and clarity, given the rules that apply to public mutual funds.

(e) Paragraph (g) refers to "decision-making tools". Are these intended to be different from those discussed in the Final Guidelines?

Section 2.2

(f) Section 2.2 is adequate, as drafted (although we believe the requirement to give contact information to CAP participants is somewhat self-evident in the circumstances), however we recommend that it is equally important that CAP participants be given information about any fees that the registrant will charge to the CAP participants, any payments that are going to the registrant from the CAP sponsor or administrator or the mutual funds and their managers, together with any relationships between the CAP sponsor or administrator, the mutual funds and their managers and the registrant.

Section 2.3

(g) As a drafting matter, we believe the phrase "the prospectus requirement does not apply to a distribution of a security of a mutual fund *that complies with the conditions set out in section 2.1*" needs additional clarity. We are unsure if you mean that the distribution complies or if you mean that the mutual fund complies (which cannot be the correct interpretation, since the conditions in section 2.1 do not impose obligations on the mutual fund). We believe that this sentence should be redrafted to state "the prospectus requirement does not apply to a distribution of a security of a mutual fund, if in respect of each trade, the conditions set out in section 2.1 have been complied with."

(h) Paragraph (i) imposes a requirement that the applicable mutual funds must comply with the investment restrictions in NI 81-102. We point out that the Final Guidelines contemplate that when investment funds are offered in a CAP that is a registered pension plan, that the funds must comply with the investment rules under applicable pension benefits standards legislation. The Final Guidelines also confirm that mutual funds must

comply with NI 81-102. In our view, the Final Guidelines are ambiguous, since it may not be possible for a mutual fund (generally a pooled fund) that is an investment option under a registered pension plan to comply with both pension investment restrictions and NI 81-102, since the investment restrictions and practices are not completely compatible or harmonized in several important areas. We submit that the CSA should resolve this ambiguity, by providing that a mutual fund (including a pooled fund) that is an investment option under a CAP that is a registered pension plan must comply with applicable pension investment restrictions and practices, without also having to comply with NI 81-102. Mutual funds (including pooled funds) that are investment options in any other form of CAP must comply with NI 81-102.

(i) As a drafting matter, we also recommend that paragraph (i) refer to the restrictions on investments and investment practices set out in NI 81-102, to clarify that you intend for mutual funds, when used as investment options in CAPs that are not registered pension plans (see our comment (h) above), to comply with all of Part 2 of NI 81-102.

(j) As a drafting matter, we find the use of the word "advised" in paragraph (ii) to be a somewhat imprecise usage. As you know, in order for mutual funds to operate (unless they are internally managed), they must have a registered portfolio manager or engage an entity that is exempt from registration to provide that service. Also what is intended by the words "in whole or in part"? We recommend this provision be deleted, since it does not add anything that is not already required by securities laws, unless the CSA wishes to ban internally managed funds, in which case, this should be stated more directly.

Section 3.1

(k) We recommend that this section be deleted as unnecessary regulation. This provision is more in keeping with traditional securities law analysis and relationships, when the members of the CSA wish to be able to identify and monitor exempt market purchases and to allow the public to monitor exempt market distributions by business corporations. As we have outlined, we believe that CAPs do not give rise to traditional relationships and accordingly, we see no need or benefit for CSA members keeping track of CAP participants' investments in mutual funds nor do we see any necessity for public tracking of these distributions. It may be that securities regulation in some provinces requires that these reports be filed (but likely on a trade-by-trade basis). If this is the case, we recommend that the proposed exemption be amended to provide a complete exemption from the trade reporting requirements, including payment of applicable exempt distribution fees.

We point out that insurance products used as investment options would not be subject to a similar regulatory burden and without a complete exemption, CAPs using mutual funds as investment options would be subject to an extra regulatory burden. If this provision is retained, we would appreciate understanding what benefit the CSA see in retaining it, compared against the compliance costs to CAP participants and industry participants.

If this provision is retained, we urge the CSA to recognize CAP relationships and put the obligation to file the reports on the CAP administrator or sponsor, and not on the mutual funds. In any event, given the national scope of many CAPs, it is often very difficult for mutual funds to know in which provinces it must file these reports based on the province/territory of residence of the CAP participants.

Responses to questions asked in CSA Notice

The CSA ask two questions in the CSA Notice.

In response to the first question, we submit that it would be more useful for CAP participants to receive a breakdown of fees and expenses in most cases, rather than an aggregated number. However, as we point out above in paragraph 5, we believe that the proposed exemption should refer to the Final Guidelines and not impose different and, certainly not more onerous requirements than those suggested in the Final Guidelines.

We have largely addressed the second question in paragraph 2 above. However, we wish to emphasize that, in our view, the CSA should not deem, or look upon the CAP as an issuer of securities. Rather, a CAP, as is recognized in the Final Guidelines, is the same as other registered tax plans, such as RRSPs and as such is not a separate "security" or "issuer". CAP participants do not receive an "interest" in a CAP. They invest directly in the securities [or otherwise] of the investment options chosen by them.

March 23, 2005

Ontario Securities Commission
20 Queen Street West
Suite 1900, Box 55
Toronto, Ontario M5H 3S8

Attention: John Stevenson, Secretary

Dear Sirs/Mesdames:

Re: Proposed Amended and Restated OSC Rule 45-501 *Ontario Prospectus and Registration Exemptions* (the "Proposed Ontario Rule")

The Association of Canadian Pension Management (ACPM) is the national voice of private and public pension plan sponsors in Canada, as well as the professional advisory firms they retain. The ACPM represents plans with $300 billion in assets and over 3 million plan members.

We are pleased to respond to your request for comments on the Proposed Ontario Rule. We have concurrently provided comments to all the Canadian Securities Administrators ("CSA") on Proposed National Instrument 45-106 *Prospectus and Registration Exemptions* (the "Proposed National Rule"). A copy of that letter is attached. This letter deals with the proposed transfer of OSC Rule 32-503 *Registration and Prospectus Exemption for Trades by Financial Intermediaries in Mutual Fund Securities to Corporate-Sponsored Plans* ("OSC Rule 32-503") into the Proposed Ontario Rule.

OSC Rule 32-503 pre-dates the current accredited investor exemption as well as the exemption proposed in CSA Notice 81-405 *Proposed Exemptions for Certain Capital Accumulation Plans* (the "CAP exemption"). In our comment letter on the Proposed National Rule, we advocate an approach to exemptions for trades to regulated pension plans and other tax-deferred retirement savings plans (collectively, "plans"). That approach involves revising the accredited investor exemption and the CAP exemption. The revised CAP exemption would then be incorporated into the Proposed National Rule. If our approach is followed, it will not be necessary to transfer the current content of OSC Rule 32-503 into the Proposed Ontario Rule, as the trades covered by OSC Rule 32-503 would already be exempt under the revised accredited investor exemption or a revised CAP exemption.

As emphasized in our comment letters on the Proposed National Rule and the CAP exemption, harmonization across jurisdictions is essential for pension industry participants and plan members. We believe that the current content of OSC Rule 32-503 should either be adopted across Canada, if there is an undeniable policy reason for it, or repealed altogether. The rules for trades to plans *must* be uniform across Canada. We question why it is necessary for the content of OSC Rule 32-503 to be maintained when Alberta is willing to repeal its local provisions in the interest of national uniformity. We urge you to do the same and integrate the substance of OSC Rule 32-503 into the Proposed National Rule.

If you have any questions in connection with our comments, please let us know. We would be happy to make further submissions on any issues that are of interest to you.

Yours truly,

The Association of Canadian Pension Management

(ORIGINAL SIGNED BY):

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PERFORMANCE THROUGH INNOVATION

BARCLAYS GLOBAL INVESTORS

March 9, 2005

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Saskatchewan Securities Commission
Ontario Securities Commission
Securities Administration Branch, New Brunswick
Office of the Attorney General, Prince Edward Island
Nova Scotia Securities Commission
Securities Commission of Newfoundland and Labrador
Registrar of Securities, Department of Justice, Government of the Northwest Territories
Registrar of Securities, Government of Yukon
Registrar of Securities, Legal Registries Division, Dept. of Justice, Government of Nunavut

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Dear Sir/Madam ,

Re: Request for Comments: Proposed National Instrument 45-106 and Companion Policy 45-106CP *Prospectus and Registration Exemptions* and Form 45-106F1, Form 45-106F2, Form 45-106F3 and Form 45-106F4

We at Barclays Global Investors Canada Limited ("Barclays") believe that the Canadian Securities Administrators ("CSA") have taken a significant and important step in harmonizing the majority of the prospectus and registration exemptions currently available across Canada. We thank you for your invitation to comment on Proposed National Instrument 45-106 and Companion Policy 45-106CP – *Prospectus and Registration Exemptions*, and Form 45-106F1, Form 45-106F2, Form 45-106F3 and Form 45-106F4 (the "Proposal"). We strongly believe in the value of meaningful dialogue between regulators and industry participants and commend the Canadian Securities Administrators for undertaking a thorough public consultation in connection with the Proposal.

Barclays, which currently manages over $50 billion in assets, is one of Canada's largest and fastest growing investment managers. We are not the manager of any traditional mutual funds but do manage the iUnits family of exchange-traded funds, the Barclays*funds* family of closed-end funds and use non-prospectused mutual funds ("pooled funds") to a fairly significant extent in our core business of providing investment advisory services to Canadian pension funds and other institutional investors. Barclays is part of a global investment management business that manages over one and a half trillion dollars in assets and we therefore have very broad experience in regulatory approaches applied to this industry, including prospectus and registration exempt investment products. Our comments will primarily focus on the potential impact of the Proposal on our pooled fund products, which we distribute in reliance on the prospectus and registration exemptions. These funds make up a significant majority of our business in Canada.

General Comments

We are very supportive of the CSA's move towards harmonizing and unifying the exempt distribution regime across Canada and commend the CSA's efforts in consolidating a majority of the exemptions currently utilized by investment managers such as Barclays. We are also very pleased that the CSA has recognized the impact of exempt market rules on investors, particularly institutional investors which are our primary client base, utilizing portfolio management services through pooled funds. We believe that the Proposal addresses our previous concerns outlined in other submissions (i.e. Ontario Securities Rule 45-501 and Multi-lateral Instrument 45-103) that the CSA must focus equally on the regulation of investment management services to institutional investors using pooled funds and not merely on regulating small and medium-sized businesses in their capital raising efforts.

While the move towards uniformity is commendable, we respectfully submit that the differences in the Proposal (i.e. the different definitions of accredited investors and different approaches to the offering memorandum exemption) still results in a general lack of harmonization across Canada. Instead of familiarizing itself with one set of rules, an issuer must still look at various local rules to ensure that the exemption is available in a particular jurisdiction. We doubt that the Proposal will reduce the overall costs to market participants as a review of the exempt distribution rules using one source is still unavailable. If the ultimate goal of the CSA is to harmonize securities legislation in Canada, as we continue to believe it should be, then it should begin by harmonizing this Proposal. Until such harmonization takes place, Canadian investors will continue to bear the costs resulting from their inability to obtain true economies of scale in selecting investment managers.

Responses to OSC Questions

Removal of restriction in Ontario for fully managed accounts to invest in securities of investment funds in reliance on accredited investor exemption (Section 2.3 – Accredited Investor)

This is a positive and welcome change from the current Ontario rule. We strongly support this change in order to "level the playing field" for all fully managed accounts in Ontario. This change will more accurately reflect the practice within the institutional investment management business in using pooled fund investments in discretionary client accounts.

Specific Comments for Ontario

Elimination of the "universal registration" regime

We would encourage the Ontario Securities Commission ("OSC") to reconsider the elimination of the universal registration system and the need for limited market dealer registration. The elimination of this rule would be another step in harmonizing the exempt market regime across the country and would relieve an unwarranted regulatory burden.

We believe that the market intermediary rule is unnecessary in circumstances where the issuer is a mutual fund, the manager of the fund is registered with the Ontario Securities Commission and a form 45-501F1 is filed in respect of the issuance of units by that fund. The "universal registration system" was designed, appropriately we believe, to ensure that the OSC was aware of the level and type of exempt market activity taking place in Ontario. In particular, having knowledge of firms participating in exempt market activities is essential to the OSC's ability to fulfill its mandate. However, where the relevant market participant is an OSC registrant, one that satisfies proficiency requirements far beyond those of a limited market dealer, the universal registration system clearly becomes an unnecessary compliance burden fulfilling no substantive purpose. We therefore urge you to eliminate the dealer registration requirement in respect of the issuance of mutual fund units the manager and/or trustee of which is a registrant and in respect of which a 45-501F1 is filed.

Conclusion

We thank you again for the opportunity to comment on the Proposed National Instrument 45-106 and Companion Policy 45-106CP *Prospectus and Registration Exemptions* and Form 45-106F1, Form 45-106F2, Form 45-106F3 and Form 45-106F4. Please contact the undersigned or Warren Collier (416-643-4075 or warren.collier@barclaysglobal.com) if you have any questions or would like additional information in respect of any of the points made in this letter.

Sincerely,

Rajiv Silgardo
President, CEO and CIO

Blaney McMurtry
BARRISTERS & SOLICITORS LLP

EXPECT THE BEST

March 16, 2005

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Securities Commission of Newfoundland and Labrador
Registrar of Securities, Department of Justice, Government of the Northwest Territories
Nova Scotia Securities Commission
Registrar of Securities, Legal Registries Division, Department of Justice, Government of Nunavut
Ontario Securities Commission
Prince Edward Island Securities Office
Autorité des marches financiers
Saskatchewan Financial Services Commission
Registrar of Securities, Government of Yukon

Dear Sirs:

Re: Comments on Proposed National Instrument 45-106 ("NI 45-106")

We wish to take this opportunity to provide two specific comments on the proposed form of NI 45-106:

1. Section 2.18 provides for a registration exemption for reinvestments of dividends or other distributions by a mutual fund "where the securityholder directs" that same be reinvested. This is different than the current wording of OSC Rule 81-501 (and similarly worded exemptions available in other jurisdictions) which exempts investment funds' reinvestment plans that permit or require that a dividend or distribution be reinvested. As you know, many mutual funds provide that distributions are automatically reinvested unless a unitholder requests to be paid in cash. Section 2.18 should be revised to be consistent with OSC Rule 81-501.

2. Section 2.40, which is a carryover from OSC Rule 45-501 (section 2.2), should be reviewed so as to consider whether it should exempt trades in variable insurance contracts <u>issued by</u> insurance companies rather than trades in variable insurance companies <u>by</u> an insurance company (as insurance companies aren't the only parties that could trade in such contracts - they could be sold by/through licensed

insurance agents who would not appear to be exempted from securities laws under this section).

Yours very truly,

Blaney McMurtry LLP

Michael J. Bennett

MJB/bl

c. Blaine Young, Alberta Securities Commission

c. Anne-Marie Beaudoin, Directrice du secrétarat, Autorité des marchés financiers

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March 21, 2005

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British Columbia Securities Commission
Manitoba Securities Commission
New Brunswick Securities Commission
Securities Commission of Newfoundland and Labrador
Registrar of Securities, Department of Justice, Government of the Northwest Territories
Nova Scotia Securities Commission
Registrar of Securities, Legal Registries Division, Department of Justice, Government of Nunavut
Ontario Securities Commission
Prince Edward Island Securities Office
Autorité des marchés financiers
Saskatchewan Financial Services Commission
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Vancouver · Toronto · Ottawa · Montréal · Calgary

Dear Sirs/Mesdames:

Re: BLG Comments on Proposed National Instrument 45-106 *Prospectus and Registration Exemptions*, Proposed National Instrument 45-102 *Resale of Securities* and Proposed OSC Rule 45-501 *Ontario Prospectus and Registration Exemptions*

We are pleased to provide our comments to the members of the Canadian securities administrators (CSA) on proposed National Instrument 45-106 *Prospectus and Registration Exemptions* and its accompanying Forms and Companion Policy (the National Exemption Rule) and proposed National Instrument 45-102 *Resale of Securities* and its Companion Policy (the National Resale Rule). This letter also provides our comments on proposed OSC Rule 45-501 *Ontario Prospectus*

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and Registration Exemptions (the Ontario Exemption Rule). **We ask that this letter be considered as a comment letter on each of these proposed instruments.**

Our comments on the proposed instruments have been compiled with input from many of the lawyers in our Securities and Capital Markets group, including those in the Investment Management group, and therefore reflect a consensus of our views. Our comments do not necessarily reflect the opinions of, or feedback from, our clients and we expect that many of our clients will provide their comments directly to the CSA.

General Comments

We are strong supporters of the National Exemption Rule to the extent that it will consolidate the existing prospectus and registration exemptions in one national instrument and revise those existing exemptions so that they are uniform across Canada. The proposals will be a welcome change to Canadian securities regulation, since significant time and effort must currently be spent to sort out the rules in each province and territory of Canada that apply to a particular exempt securities transaction. The fact that Canada has 13 different regulators and 13 different sets of laws is accentuated when reviewing prospectus and registration exemptions, perhaps more than with any other field of securities regulation. We applaud the CSA for undertaking this important regulatory initiative and for achieving as much uniformity as is evident in the National Exemption Rule.

In particular, we commend the Autorité des marchés financiers for its efforts in rationalizing the exempt distributions regime in Quebec through its support of Bill 72 and its participation in the National Exemption Rule and the National Resale Rule.

However, the new proposals will not achieve as much uniformity as we believe should be possible. As we highlight in this comment letter, local exceptions and differences will continue to exist for reasons that do not appear to reflect regional differences. In our view, these local exceptions and differences will continue the unnecessary regulatory burden on those wishing to conduct a pan-Canadian business and we doubt that these exceptions and differences could be supported on any cost-benefit analysis.

In addition to adopting the National Exemption Rule, we understand that certain provinces and territories will retain or make local exemption rules, although the notice accompanying the National Exemption Rule does not clearly explain what these local exemption rules will contain or where or why these local exemption rules will be necessary. We were alerted to the prospect of local exemption rules by the following sentence in the CSA notice: "Upon final publication of the Instrument and related repeals and consequential amendments, we will publish a third CSA staff Notice that will cite remaining local exemptions for each jurisdiction". We also note that this statement is made again in section 1.5 of the Companion Policy to the National Exemption Rule. It is very difficult to properly comment on the National Exemption Rule without understanding the complete picture of prospectus and registration exemptions across Canada.

We know that the Ontario Securities Commission, for example, does not propose to repeal OSC Rule 45-501 *Exempt Distributions*, but rather will amend and restate this Ontario-only rule as the Ontario Exemption Rule. We urge the individual members of the CSA, including the Ontario

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Securities Commission, to carefully consider whether local exceptions and differences are justified from a cost-benefit perspective, particularly for market participants wishing to do business across Canada. If local exceptions and differences are considered necessary, to the extent that the notice accompanying the National Exemption Rule did not explain the rationale for these exceptions and differences, we would expect that the CSA would allow market participants to comment on these exceptions and differences before adopting them.

We also strongly recommend that all prospectus and registration exemptions be included in the National Exemption Rule, rather than in separate local or national rules, in order to make it easier to know what the rules are, which should lead to better compliance. For example, we recommend that the specialized prospectus and registration exemptions proposed in CSA Notice 81-405 in May 2004 (but which have not been finalized) regarding mutual funds that are issued to member-directed capital accumulation plans be incorporated into the National Exemption Rule. We note that you asked for feedback on this issue in the notice accompanying the National Exemption Rule. However, we believe that before those May 2004 exemptions can be included in the National Exemption Rule, they must be amended in ways that are described in two comment letters—one submitted jointly by the Association of Canadian Pension Management (ACPM) and the Pension Investment Association of Canada and dated August 10, 2004 (in response to the May 2004 request for comments) and the other that will be sent by ACPM to the CSA in March 2005 (in response to the request for comments on the National Exemption Rule). The Pension group of Borden Ladner Gervais LLP assisted the pension associations in preparing those submissions and we strongly endorse their proposals. If the pension associations' submissions are accepted by the CSA, changes to both the National Exemption Rule and the Ontario Exemption Rule will be necessary. As drafted, neither rule appears to reflect the initiative of the Joint Forum of Financial Market Regulators regarding CAP Guidelines and we urge the CSA to rationalize these rules in the ways outlined in the comment letters referred to above.

Specific Comments on NI 45-106

Accredited Investor Exemption

We strongly support the largely uniform categories of accredited investor provided for in the National Exemption Rule.

In particular, we commend the Ontario Securities Commission for removing its restrictions regarding "fully managed accounts" investing in investment funds. In our view, this change is long overdue, although given the OSC's earlier opposition to making this change, we believe market participants would have benefited from an explanation of why this change is being proposed at this time.

We note that the fully managed account branch of the accredited investor definition requires the person acting on behalf of the account to be registered as an adviser under the securities legislation of a jurisdiction of Canada or, except in Ontario, a foreign jurisdiction. The accompanying notice does not explain why Ontario takes a different position from the other regulators in Canada. We suggest that there should not be a policy reason to prevent accounts fully managed by an investment adviser registered outside Canada from purchasing securities issued in a private placement. In fact, we suggest that, at least in Ontario, a purchase of securities by these accounts

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would constitute a distribution outside the province and, therefore, governed by Interpretation Note 1. That is, an issuer and a purchaser in these circumstances do not need to find a prospectus exemption, but merely ensure that securities come to rest outside Ontario. Therefore, we would suggest that either Ontario should drop its exception or the Companion Policy should clarify that a trade to an account managed by a foreign registered portfolio manager would not constitute a distribution in Ontario, or elsewhere in Canada, if the other jurisdictions agree.

We also agree with the removal of what are now clauses (p) through (s) of the definition of "accredited investor" in OSC Rule 45-501 in favour of putting them in a separate exemption. We believe that a person or company should be either an accredited investor for all issuers or not at all.

Private Issuer Exemption

We note that, in Ontario, the proposed private issuer exemption has been reintroduced to replace the current closely-held issuer exemption created by OSC Rule 45-501. As you know, the current closely-held issuer exemption replaced Ontario's former private issuer exemption. The closely-held issuer exemption was intended to establish bright line tests to determine when that exemption would be available, given the difficulties with the private issuer or private company exemptions in determining who would be a "member of the public". However, the closely-held issuer exemption proved to be less flexible than the private issuer exemption and difficulties with its use became apparent. Therefore, we support the reintroduction of the private issuer exemption. We also support the listing of specific types of potential investors in a private issuer via clauses (a) to (j) of section 2.4(1). Determining whether a person falls within one of those clauses will avoid the difficult determination of whether that person is a member of the public.

Offering Memorandum Exemption

As stated above, we believe that the CSA should accept a uniform approach to prospectus and registration exemptions. We note that there are three approaches to the offering memorandum exemption: one very liberal (the B.C. approach), one more restricted version (the Alberta approach) and the Ontario approach, where no exemption will exist. We believe that the CSA should examine and explain to market participants the experience of those jurisdictions where the offering memorandum exemption has been in place for several years. This information would help both regulators and market participants in determining the appropriate national approach.

Overall, we believe that the offering memorandum exemption could be very useful for small issuers that wish to raise money in a cost-efficient way. However, we are concerned that the B.C. approach is so wide open that it would be attractive for many significant issuers (including conventional mutual funds) to use the exemption and by-pass the prospectus regulatory process in circumstances where they would be perfectly able to comply. In using this exemption an issuer would avoid review of, and the regulation that would apply to, the offering and the issuer's operations by securities regulators and the accompanying regulatory burdens (including the delays inherent in prospectus reviews) in exchange for the requirement that investors sign a standard form risk acknowledgement statement. This exemption may also be an avenue for unscrupulous issuers to raise money from unsuspecting investors. Even if this exemption has not been abused to date, it could become the case if other jurisdictions adopted the B.C. approach.

Accordingly, we recommend that the Alberta approach rather than the B.C. approach be adopted nationally for two principal reasons: (i) the amount that an investor could lose would be limited and (ii) investors would have to have significant assets in order to qualify as an "eligible investor". Regardless of the final decision of the CSA, for the reasons discussed above, we believe that it is essential that the approach be taken in a uniform manner across the country.

As a drafting matter, we are confused by clause (d)(ii) of the Alberta approach. This exemption is limited to, in the case of mutual funds, one that is a reporting issuer and, in Manitoba, Quebec and Saskatchewan, an issuer listed for trading on an exchange or quoted on an over-the-counter-market. Very few mutual funds are traded in the secondary market, so it is unclear why this restriction is being imposed in those three provinces.

Minimum Purchase Exemption

We endorse the CSA's decision to establish one uniform minimum amount for this exemption and the OSC's decision to reintroduce this exemption. We have three comments on this section:

1. The requirement to pay the minimum amount "in cash at the time of the trade" does not appear to permit any time for settlement. Accordingly, we suggest the following phrase be adopted: "in cash at the time of the settlement of the trade".

2. The investment management industry has long requested that the exemptive provisions allow for "sprinkling" of minimum amounts among several pooled funds, provided those pooled funds are managed by the same portfolio manager. Although the changes to the fully managed account category of accredited investor will allow managers of fully managed accounts to allocate invested dollars among pooled funds, we recommend that the minimum amount exemption also provide that the minimum investment may be allocated among different investment funds within a family of funds.

3. We also suggest it should be permissible for related accounts to invest $150,000. For example, if two spouses invested $150,000 between them, that should be sufficient to entitle them to use this exemption. Similarly, an individual and his or her RRSP, a parent (or parents) and children who share the same residence and/or "in trust for" accounts should be permitted to be considered as one investor for this purpose.

Take-Over Bids and Issuer Bids

We understand that section 2.16 of the National Exemption Rule is meant to provide exemptions for both the trade by a security holder to a bidder and securities issued by the bidder (although in the case of a trade by a security holder under an issuer bid, this duplicates section 2.15). To clarify, we would suggest adding the words "by or to the bidder" after the word "security" in section 2.16(1). We understand that the current exemption is interpreted to provide an exemption for securities issued by a bidder to its financial adviser upon a successful acquisition on the basis that the securities are being issued "in connection with" a bid. If this is intended, the wording should be broadened and this concept referred to in the Companion Policy.

Section 2.17 would provide, for example, an exemption in Alberta to permit an Ontario security holder to trade its securities to an Alberta bidder, but in Ontario it does not provide an exemption

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for the issuance of securities by the Alberta bidder to the Ontario security holder. This oversight should be remedied. We suggest: "The dealer registration requirement does not apply to a trade in a security by or to the bidder in connection with a transaction that would have been a take-over bid or an issuer bid in the local jurisdiction if the security holder were in such jurisdiction.

Additional Investment Exemption

The "additional investment in investment funds" exemption is unnecessarily limited to trades in additional securities of the same class or series of the same investment fund and would not allow for "sprinkling" of additional investments across different investment funds or aggregation of the initial $150,000 in several related investment funds. The effect of this is unnecessarily to prevent investors from diversifying their investments. The investment management industry has long asked for this change, and we urge the CSA to consider allowing this form of "sprinkling".

It is becoming common practice for investment funds to offer their securities in more than one class and/or more than one series, for example to accommodate differing fee structures depending on the nature of the investor or the size of the investment. In such cases the pool of assets, from which such classes and series derive their value is the same and therefore the investment is the same regardless of which class and series an investor has purchased at any time. In these circumstances, we submit there is no policy reason not to allow a subsequent purchase of securities or an automatic reinvestment of distributions, in securities of a different class or series to have the benefit of an exemption, so long as the investor holds securities of the same issuer (without regard to the class and series of such securities) with a purchase price or current net asset value of at least $150,000.

As a drafting point, we would suggest deleting the words "that initially acquired securities as principal for an acquisition cost of not less than $150,000 paid in cash at the time of the trade". We suggest that it should not matter how the security holder acquired the securities of the investment fund that have the value of $150,000 as required in clause (b). For example, if an investor was an accredited investor and acquired securities over time that have a current net asset value of in excess of $150,000, and the investor ceases to be an accredited investor, he or she should nonetheless be allowed to purchase more securities in that investment fund.

Ordering of Exemptions

We realize that some attempt has been made to group similar exemptions together. However, we think that this grouping can be improved and doing so would assist the ease of interpretation and use of the National Exemption Rule. For example, those exemptions that are subject to a seasoning period should be grouped together in a Division separate from those that are subject to a restricted period on resale. Therefore, for example, we would suggest interchanging sections 2.3 and 2.4, moving sections 2.15 to 2.17 ahead of section 2.12, moving section 2.19 after 2.21 and moving section 2.31 after 2.32. We would also add a new Division 6: Exempt Securities, which would cover sections 2.35 to 2.42, and a new Division 7: Removal of Exemptions, which would include section 2.44. We suggest moving section 2.43 either to Division 2: Transaction Exemptions to the first part of Division 5: Miscellaneous Exemptions, which title we suggest be changed to "Miscellaneous Exempt Trades".

Removal of Exemptions for Market Intermediaries

The OSC does not propose to change the universal registration regime in Ontario, but does not otherwise discuss why this regime continues to be important for the Ontario capital markets. This regime is also part of the securities legislation of Newfoundland and Labrador, but the notice accompanying the National Exemption Rule does not explain whether this regime will continue in this province. We believe that the universal registration regime in these two provinces creates an unwarranted regulatory burden and we urge the OSC and the Securities Commission of Newfoundland and Labrador to discontinue it.

Adviser Registration Exemption

The OSC currently provides exemptions from adviser registration for foreign advisers and sub-advisers under OSC Rule 35-502 *Non Resident Advisers.* No other province or territory in Canada has adopted a similar rule, yet other members of the CSA routinely apply similar regulatory rationale to foreign advisers and sub-advisers and routinely grant relief on the same basis as in OSC Rule 35-502, on an *ad hoc* basis. We recommend that this exemptive relief should be provided for in the National Exemption Rule in the interests of national uniformity and in order to provide for greater clarity of the regime as it applies to advisers wishing to do business in the other provinces and territories.

We understand that certain lawyers take the view that the provision in the Companion Policy to Multilateral Instrument 45-103, which is the equivalent of section 1.7 of the Companion Policy to the National Exemption Rule, has the effect of preventing a seller or its agent in connection with a trade that is exempt from the dealer registration requirements from giving advice that would be incidental to the trade. That is, the seller or its agent could say: "Buy this security", but they could not say: "You *should* buy this security". We believe that section 1.7 of the Companion Policy is meant to provide that those persons providing investment advice generally regarding trades or securities that are exempt from the dealer registration are not, because of the exemptions applicable to the trades or securities, also exempt from the requirement to be registered as advisers. For example, a person giving advice solely to accredited investors is not exempt from the adviser registration requirements. This provision should not, we suggest, be interpreted to prevent an unregistered dealer from providing the same type of advice with respect to an exempt trade that a registered dealer could give in connection with a trade. Accordingly, we suggest that an exemption be added as follows: "The adviser registration requirement does not apply to a person if the advice given is incidental to a trade that is exempt from the dealer registration requirement."

Reporting Requirements

We have several comments on the reporting requirements of Part 6 of the National Exemption Rule:

1. Although we acknowledge that the filing of reports on a private placement has been required for decades, we question the continued need for this. Securities issued under many other exemptions do not require such a report. It is unclear what the distinction is. If there is any purpose, it is as a declaration by the seller that it is relying on the exemption. We believe that the same result, at a far reduced compliance cost for issuers, could be

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obtained through a requirement that all issuers issuing securities under the National Exemption Rule be required to maintain records of such issuance, including evidence of compliance with the Rule, for a specified period.

2. If the CSA do not accept our first comment on this issue, we urge the CSA to reconsider the requirement to provide names and personal information of purchasers of securities issued under exemptions to be provided to the securities regulatory authorities. With the advent of privacy laws, we do not see the continued regulatory need for publicly naming purchasers of exempt securities. Even if the CSA are unwilling to go as far as we suggest in our comment above, we recommend that the National Exemption Rule be amended to require issuers to maintain this information in their own books and records only, such that this information is no longer required to be filed with the securities regulatory authorities. This is consistent with what the OSC had implemented in the original version of OSC Rule 45-501F1 that came into force in December 1998.

3. If the CSA continue to collect these reports, we suggest that the individual members of the CSA need not continue to publish summaries of them. These reports should not be considered to give notice to the public of any private placement. There is no need to give such notice for non-reporting issuers. For reporting issuers, that issue should be dealt with under a reporting issuer's timely and continuous disclosure obligations.

4. Section 6.1 of the National Exemption Rule provides that the issuer must file a report in the "local jurisdiction in which the distribution takes place". In light of Section 1.4 of the Companion Policy to the National Exemption Rule (which we discuss separately under "Compliance with the Laws of More than one Jurisdiction"), it is not clear where an issuer must file a report of an exempt distribution. The Companion Policy implies that two reports are required; a conclusion with which we disagree. Accordingly, we suggest that, in accordance with accepted practice, the CSA clarify that the report need be filed only in the jurisdiction where the purchaser is located.

Compliance with the Laws of More than One Jurisdiction

Section 1.4 of the Companion Policy to the National Exemption Rule reminds issuers that a trade can occur in more than one jurisdiction and gives an example that a trade from a person in Ontario to a purchaser in Alberta may be considered to occur in both jurisdictions. Although we agree that this statement is consistent with the jurisprudence, we do not believe that there is any policy reason to take the position that there must be compliance with the legislation of both the jurisdiction of the issuer and that of the purchaser. As the purpose of the legislation is to protect investors, we suggest that there should be dealer registration and prospectus exemptions in the jurisdiction of the seller, if a trade is made in compliance with the laws of the jurisdiction of the purchaser. We further suggest that this principle should also apply when the investor is in a foreign jurisdiction. This approach is consistent with the OSC's Interpretation Note 1.

Responsibility for Compliance

Section 1.9 of the Companion Policy to the National Exemption Rule states that "an issuer should request that the purchaser provide details on how they fit within the accredited investor definition".

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We recommend that this wording be changed to read: "An issuer should request that the purchaser indicate within which branch of the accredited investor definition the purchaser fits". This change would make it clear that it is adequate to follow the current practice of requiring the investor to initial or check a box opposite one of the clauses that make up the definition.

Specific Comments on the National Resale Rule

Resale by Promoters in Ontario

Proposed section 2.15 of the National Resale Rule would impose control block type resale restrictions in Ontario on promoters who acquired their securities under certain exemptions. We recommend that this section not be adopted for the following reasons. First, as described throughout this letter, we believe that the laws across the country should be uniform. Second, we note that the exemptions referred to in Appendix G are all exemptions set out in former versions of OSC Rule 45-501. Presumably then (there is no discussion in the Notice of why this section is being proposed), the section is meant to keep the status quo, such as under section 6.1 of the current OSC Rule 45-501, but the OSC has decided that going forward there is no need for the added restrictions on resale for promoters. We agree with the OSC that it is preferable not to maintain the concept of section 6.1, but we do not understand the need to maintain the status quo for those who may have previously acquired securities with the expectation that they would be subject to control block type restrictions. If the OSC is satisfied that there is not a sufficient policy reason to impose these additional restrictions on promoters in the future, it should be satisfied that there is not a sufficient policy reason to continue to impose them on promoters who acquired securities in the past.

Additional Regulatory Initiatives

The CSA indicate in the notice accompanying the National Exemption Rule that the proposed exemption regime is aligned with the CSA's policy initiative to revamp and harmonize the registration categories and requirements across Canada. We urge the CSA to undertake this latter project in keeping with the overall spirit of the National Exemption Rule—to regulate on a **uniform** basis across Canada, with a minimum of opt-outs or local variations. In particular, we do not see the need for any local variations or opt-outs with the registration regime.

****

We hope that our comments will be considered as constructive by the CSA. Please contact either Paul Findlay at 416-367-6191 or Rebecca Cowdery at 416-367-6340 if you wish to discuss our comments with us.

Yours very truly

"Borden Ladner Gervais LLP"

Securities and Capital Markets Group
Borden Ladner Gervais LLP

April 8, 2004

VIA EMAIL TO:

Alberta Securities Commission
British Columbia Securities Commission
Manitoba Securities Commission
New Brunswick Securities Commission
Securities Commission of Newfoundland and Labrador
Registrar of Securities, Department of Justice,
Government of the Northwest Territories
Nova Scotia Securities Commission
Registrar of Securities, Legal Registries Division,
Department of Justice, Government of Nunavut
Ontario Securities Commission
Prince Edward Island Securities Office
Autorité des marches financiers
Saskatchewan Financial Services Commission
Registrar of Securities, Government of Yukon

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Dear Sirs,

Re: Proposed National Instrument 45-106 and
Proposed Amendments to OSC Rule 45-501

Thank you providing the Canadian Institute of Mortgage Brokers and Lenders (CIMBL) with the opportunity to comment on Proposed National Instrument 45-106 and Proposed Amendments to OSC Rule 45-501

The Canadian Institute of Mortgage Brokers and Lenders (CIMBL) is the national organization which represents the Canadian mortgage industry. Its membership is drawn from every province and from all sectors of the mortgage industry including mortgage brokers, mortgage lenders and mortgage insurers. This diversified membership enables CIMBL to bring together key players from all sectors with the aim of enhancing professionalism in Canada's mortgage industry through Best Practices, harmonized educational standards, fraud prevention, informative publications, improved public profile and enforcement of a Code of Ethics.

CIMBL currently has 7,000 individual members and it is the largest member-based mortgage industry organization in Canada.

CIMBL and its members first became aware of Proposed National Instrument 45-106 and Proposed Amendments to OSC Rule 45-501 as a result of the recent publication of *Mortgage Brokerages,Mortgage Lenders and Mortgage Administrators Act:* A Consultation Draft. This draft was produced by the Ontario Ministry of Finance and was released on March 21, 2005. Page 16 of the Draft confirms that "trades in mortgages are not subject to the registration and prospectus requirements of the *Securities Act* if the mortgages are sold by a person who is registered, or exempt from registration, under the *Mortgage Brokers Act*." However, the Draft then goes on to indicate that because of "concerns over consumer protection given the potential complexity of these investments", the Ministry proposes that the current registration and prospectus exemption for syndicated mortgages that is currently part of Ontario Securities law may be removed. This would mean that syndicated mortgages could only be sold by dealers registered under the applicable securities legislation and in compliance with the prospectus requirements of such legislation.

CIMBL members are concerned about the removal of the exemption for syndicated mortgages for a number of reasons:

1. Mortgage industry participants have not had the opportunity to comment on the proposed National Instrument 45-106 Prospectus and Registration Exemptions and the Proposed Amendments to OSC Rule 45-501.

   The OSC and other CSA members published these documents on December 17, 2004, inviting comments until March 17, 2005. The mortgage industry, a significant stakeholder, was not informed directly of the proposed changes. It was not until the release of the Consultative Draft for the Mortgage Brokerages, Mortgage Lenders, and Mortgage Administrators Act on March 21, 2005, that this change came to our attention. Unfortunately, by this time, the deadline for providing comments had passed.

   Once CIMBL became aware of N.I. 45-106 and the Amendments to OSC Rule 45-501 CIMBL contacted Jo-Anne Matear who was identified in the document as one of the parties to which questions should be addressed. CIMBL requested an extension of the deadline for the comments and was told that it could comment, but that it must do so very quickly if it wanted its comments to be considered.

   CIMBL would like to bring to your attention that none of the letters of comment on N.I. 45-106 and the Amendments to OSC Rule 45-501CIMBL that have been published mention the issue of mortgage syndication. We believe that this indicates that the industry was unaware of the proposals re syndication found in the document and that the industry has not had an adequate opportunity to provide its comments.

Our members believe that a rushed response to the proposed changes is a recipe for poor public policy. We strongly urge the CSA and the OSC to extend the period for comment so that CIMBL can do additional research and provide additional industry comments.

2. Given that the proposed amendments to OSC Rule 45-501 would take away the exemption that is currently relied upon in Ontario, we would like to speak directly to matters relating to mortgage syndication in Ontario. In 1992 Ontario, under the Ministry of Finance, implemented enhanced consumer protection measures, including mandatory disclosure requirements and provisions relating to the administration and servicing of mortgage investments. Since that time, billions of dollars of syndicated mortgages have been issued and there have been no real problems or harm to those who have been investing in this product.

   Although the industry is open to suggested improvement in the regulation of syndicated mortgages, we believe that the current disclosure document, *Form 1, Investor Lender Disclosure Statement for Brokered Transactions* provides appropriate disclosure to private investors, whether they are investing as individuals or as part of mortgage syndicates.

   If the Ontario Ministry of Finance or the OSC has concerns over the current level of consumer protection provided under the Mortgage Brokers Act, the industry would be pleased to consult and propose changes that could be incorporated into the new Ontario Mortgage Brokerages, Mortgage Lenders and Mortgage Administrators Act. Before the Ministry cedes some jurisdiction to the OSC, there should be discussions with the industry to determine whether any potential concerns could be better addressed in the new mortgage brokers act.

3. Placing syndicated mortgages under the partial jurisdiction of the securities regulatory authorities will result in dual registration requirements, adding expense and red tape to the few brokers who would continue to offer them.

   Under the proposed changes, syndicated mortgages, although based on real property, would be governed under securities legislation, but would still fall under the jurisdiction of the Mortgage Brokerages, Mortgage Lenders and Mortgage Administrators Act (with respect to accounting and reporting).

   In order to be allowed to offer syndicated mortgages, mortgage brokers would incur the expense and effort of having to register as a dealer. Because the limited market dealers are entitled only to act in connection with registration exempt trades, the registration (at least in Ontario) would have to be as an investment dealer unless the mortgage syndicators limited themselves to dealing only with Accredited Investors. A limited market dealer would be required to acquire the services of registered investment dealers if a prospectus was required. If sold to accredited investors only, the brokers would be required to file documents on each mortgage syndication and pay a filing fee for each

such mortgage to the securities regulator. In Ontario this fee would be $500 per mortgage. This extra financial burden would be passed on to consumers.

The requirements to comply with the FSCO rules and regulations would remain despite the additional work required to comply with the securities laws. These changes and the need for OSC pre-approval, could impact response time in the underwriting of a mortgage proposal.

Anticipated costs and benefits are identified on page 15 of the Proposed National Instrument 45-106 and Proposed Amendments to OSC Rule 45-501. CIMBL would like to point out that the document is silent on the anticipated costs and benefits of the proposals re mortgage syndication. CIMBL is concerned that there are many elements of securities law that may not work with syndicated mortgages so we believe that a discrete cost benefit analysis should be undertaken before any of the proposed changes are implemented.

4. Removal of the exemption for syndicated mortgages from Securities law will place onerous restrictions on which Canadian citizens will be allowed to invest in a syndicated mortgage.

   The proposed legislation will eliminate any mechanism for private investors who do not qualify as "Accredited Investors", or who do not wish to invest at least $150,000 in syndicated mortgages with limited market dealers. The definition of an Accredited Investor (see below for details relating to accredited investors) is such that only a very small proportion of citizens would qualify on that basis to invest in syndicated mortgages.

   > m) an individual who beneficially owns, or who together with a spouse beneficially own, financial assets having an aggregate realizable value that, before taxes but net of any related liabilities, exceeds $1,000,000;
   >
   > n) an individual whose net income before taxes exceeded $200,000 in each of the two most recent years or whose net income before taxes combined with that of a spouse exceeded $300,000 in each of those years and who, in either case, has a reasonable expectation of exceeding the same net income level in the current year"

   This will decrease the ability of the vast majority of investors to add diversification to their portfolios through the use of syndicated mortgages. For borrowers, it will decrease the pool of funds available to them to finance the purchase of a home or in the case of businesses, the funds needed to build or purchase commercial properties.

   The end result will be to reduce the number of players in the mortgage lending business. The borrowing consumer would have a less competitive marketplace and mortgage pricing and availability would reflect the lower level of competition.

In this letter I have tried to demonstrate that the industry does not believe there is a problem with syndicated mortgages. If problems do exist, then they should best be addressed by consultation with the industry and regulation under legislation regulating mortgage brokers. It is our position that the exemption for syndicated mortgages should be retained within securities legislation and that responsibility for the mortgage brokerage industry should remain with the respective provincial regulators in order to eliminate the negative administrative and financial ramifications that would result from such a change.

CIMBL would like the members of the CSA to postpone any changes to the securities regulations governing syndicated mortgages until the ramification of any changes have been identified and alternative solutions have been fully considered.

We appreciate that the members of the CSA may be concerned about possible delays in the implementation of the many other non mortgage related proposals found in N.I. 45-106 and the amendments to OSC Rule 45-501. CIMBL believes that there is no reason why the rest of the rule can not move forward and leave the element of syndicated mortgages unchanged.

If, after careful consideration, the members of the CSA believe that mortgage syndications should fall under securities regulations, we believe that a new rule should be drafted with input from all interested parties including mortgage brokers and investors. Creating a new rule would allow for a thoughtful process that would allow full consultation.

We thank you for the opportunity to provide these comments beyond the March 17 deadline. Do not hesitate to contact me should you have any questions.

Sincerely,

Mark Webb
Senior Director Professional Affairs, CIMBL

Cc: mikecolle.mbconsultations@fin.gov.on.ca
Andrew Moor, Co-Chair CIMBL Government Relations Committee
Paul Grewal, Co-Chair CIMBL Government Relations Committee
Michael Ellenzweig, Executive Director, CIMBL

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CANADIAN LISTED COMPANY ASSOCIATION

March 17, 2005

Alberta Securities Commission
British Columbia Securities Commission
Manitoba Securities Commission
New Brunswick Securities Commission
Securities Commission of Newfoundland and Labrador
Registrar of Securities, Department of Justice, Government of the Northwest Territories
Nova Scotia Securities Commission
Registrar of Securities, Legal Registries Division, Department of Justice, Government of Nunavut
Ontario Securities Commission
Office of the Attorney General, Prince Edward Island
Autorité des marchés financiers du Québec
Saskatchewan Financial Services Commission
Registrar of Securities, Government of Yukon
blaine.young@seccom.ab.ca
consultation-en-cours@lautorite.qc.ca

Re: Proposed National Instrument 45-106 Prospectus and Registration Exemptions Form 45-106F1, Form 45-106F2, Form 45-106F3, Form 45-106F4, Form 45-106F5, and Companion Policy 45-106CP Prospectus and Registration Exemptions

Dear Sirs:

The Canadian Listed Company Association (CLCA) is pleased to provide comments on the proposed revisions to NI 45-106. The Canadian Listed Company Association represents the viewpoint of public Listed Companies ("Issuers") and conducts education and advocacy programs on their behalf. This letter hasn't been fully reviewed by our board and we ask that if there are any additions or significant amendments we be permitted to forward those in the next few business days.

Our past comment letters and newsletters can be found on our website www.lcaca.com. Our comments and opinions tend to focus on the following areas:

1. Harmonization must preserve the parts of the securities market that are proven and working well. The challenge is to coordinate and standardize, yet allow for the tremendous difference in size and industries that characterize our markets.

2. One of the key economic advantages to doing business in Canada is the access to a speculative pool of capital at relatively low cost by venture issuers. This access is made possible by our unique venture class regulations in an appropriately regulated market place. In fact a large number of small issuers is not just a western phenomenon.

We are very pleased at the movement toward harmonizing prospectus and registration exemptions. These exemptions are extremely important for the health of Canada's capital raising system as evidenced by the fact well over 80% of funds raised by venture issuers are through these exemptions. We are disappointed there remain differences in rules and refusal by Ontario to adopt some key exemptions that are widely used and proven beneficial in the western provinces. The costs and inefficiencies of conducting a national private placement will be reduced by this proposal but those jurisdictional differences remain.

More Specific Comments Follow:

A. Capital Raising Exemptions

a. Accredited Investor: We feel the financial criteria is too high for an individual, however the private Investment Club exemption provides an alternative to those affected by the limits to qualify.
b. Private Issuer: We are very pleased there is uniform acceptance of this exemption.
c. Family Friends and Business Associates: Ontario has adopted a narrower version and omitted the concept of friends all together, even though it's accepted for private issuers. This will continue to cause confusion, expense, disadvantage to new ventures in Ontario and perhaps some inadvertent non-compliance in multi jurisdiction placements.
d. Offering Memorandum: We agree with the wider adoption of this exemption although the investment limits and slight differences among the provinces should be removed as they are very close. The failure to adopt this exemption by Ontario and Quebec would be very disappointing and will actually reduce disclosure and director liability as issuers use exemptions requiring no disclosure document or certification of disclosure.

B. Transaction Exemptions

a. Asset Acquisition: The requirement for a $150,000 fair value is not applicable to Canada's junior mining exploration industry, which structures deals on an option basis, and small dollar value amounts in shares are often issued. The same concept should apply to Canada's technology sector which often uses licensing arrangements instead of purchases and accordingly would have need to issue small amounts

of shares. This would avoid not disclosing an intent to issue shares in payment and then setting up the issuance as a shares for debt.

b. Private Investment Club: These are a popular mechanism to share and control risk we fully endorse this proposal.

C. Employee, Executive Officer, Director and Consultant Exemption

a. Unlisted Reporting Issuer Exemption: The exclusion of CNQ Canada's newest Stock Exchange in the definition of listed issuer is unwarranted as it is a recognized stock exchange and corporate law, and governance requirements apply to compensation and no arms length transactions consistent with the provisions set out here. Differentiating between recognized exchanges causes confusion, expense and inadvertent non-compliance in some cases.

D. Offerings By TSX Venture Exchange Offering Document

a. Exclusion by Ontario: Ontario has not adopted the Short Form Offering document on the TSX-V which has been well established in Canada and is a system that enhances disclosure and requires due diligence on the part of a member of the Exchange and Investment Dealers Association. As with the omission of the Offering Memorandum, this exclusion will actually reduce disclosure and director liability as issuers use exemptions requiring no disclosure document or certification of disclosure.

In conclusion we fail to understand why key jurisdictions would not adopt exemptions that enhance disclosure and require due diligence be conducted on that disclosure with the personal liability of Directors and Officers at stake.

Thank you for the opportunity to comment on your proposal.

Sincerely,

D. Bruce McLeod, P.Eng.
President & Director

"Donald A. Gordon"

Donald A. Gordon, CFA
Executive Director

Credit Union Central BC

March 7, 2005

Alberta Securities Commission
British Columbia Securities Commission
Manitoba Securities Commission
New Brunswick Securities Commission
Securities Commission of Newfoundland & Labrador
Registrar of Securities, Department of Justice, Government of the Northwest Territories
Nova Scotia Securities Commission
Registrar of Securities, Legal Registries Division, Department of Justice, Government of Nunavut
Ontario Securities Commission
Prince Edward Island Securities Office
Autorité des marchés financiers
Saskatchewan Financial Services Commission
Registrar of Securities, Government of Yukon

Mr. Blaine Young
Alberta Securities Commission
#400 - 300 - 5th Avenue S.W.
Calgary, AB T2P 3C4

Ms. Anne-Marie Beaudoin
Directrice du secrétariat
Autorité des marchés financiers
Tour de la Bourse
800 square Victoria
C.P. 246, 22e étage
Montreal, PQ H4Z 1G3

Dear Sir/Madam:

RE: National Instrument 45-106 Prospectus and Registration Exemptions

On behalf of the credit union system in British Columbia, Credit Union Central of British Columbia ("Central") welcomes the opportunity to comment on proposed National Instrument 45-106 Prospectus and Registration Exemptions ("Proposed NI 45-106"). Central is the trade association of British Columbia's 54 credit unions. Combined, the credit unions in British Columbia operate 347 branches in 137 communities, including 40 where they are the only financial institution. They provide essential financial services for approximately 1.5 million members or one-third of the provincial population. British Columbia credit unions are regulated

Credit Union Central of British Columbia
1441 Creekside Drive, Vancouver, BC V6J 4S7
Telephone 604 734 2511 / Fax 604 737 5055

by the Financial Institutions Commission pursuant to the *Credit Union Incorporation Act* (British Columbia) and the *Financial Institutions Act* (British Columbia).

Central is a central credit union incorporated under British Columbia credit union legislation and is a central cooperative credit society for which an order has been made under section 473(1) of the *Cooperative Credit Associations Act* (Canada). Central is a reporting issuer in British Columbia, Alberta, Saskatchewan, Manitoba and Ontario.

Central supports the stated purpose of Proposed NI 45-106 of harmonizing both the majority of prospectus and registration exemptions currently available across Canada, and the disclosure and filing requirements associated with those exemptions. However, in reviewing Proposed NI 45-106, Central has identified certain issues on which it wishes to provide the following comments:

1. Section 2.35 -- Guaranteed Debt.

   Central supports the broadening of this exemption to include debt securities issued by "Canadian financial institutions". However, subsection 2.35(3) requires that if the trade in such a security occurs in British Columbia, then the debt security must be rated by a rating agency designated by the securities regulatory authority in British Columbia. As a result, the exemption is not harmonized in British Columbia. In our view, this exemption should be harmonized and British Columbia should not impose different requirements than the other jurisdictions.

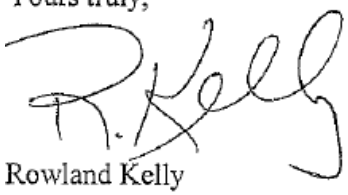
2. Section 2.42 -- Schedule III Banks and Cooperative Associations -- Evidence of Deposit.

   Section 2.42 provides an exemption from the registration and prospectus requirements for a trade in an evidence of deposit issued by a Schedule III bank or an association governed by the *Cooperative Credit Associations Act* (Canada). We have concerns with the proposed exemption, from our own perspective and from the perspective of the credit union system. The exemption is limited to an association governed by the *Cooperative Credit Associations Act* (Canada). It does not extend to a central cooperative credit society, such as Central, for which an order has been made under section 473(1) of the *Cooperative Credit Associations Act* (Canada). In our view, there is no rationale for providing the exemption to an association governed by the *Cooperative Credit Association Act* (Canada) and not extending it to a cooperative credit society for which an order has been made under section 473(1) of that Act. We believe Section 2.42(1) should incorporate the language in paragraph (b) of the definition "Canadian financial institution". We are also of the view that section 2.42 should provide the same exemptions for provincially regulated financial institutions as it provides to Schedule III banks. Specifically, this exemption should be available for evidences of deposits issued by credit unions. We appreciate that in many Canadian jurisdictions the securities legislation excludes from the definition of "security" an evidence of deposit issued by a credit union incorporated in the particular jurisdiction. However, we believe the exemption should be available to Canadian credit unions, regardless of their jurisdiction of incorporation. In our view, section 2.42 should exempt from the registration and

prospectus requirements an evidence of deposit issued by a credit union, caisse populaire or league that is authorized by an enactment of Canada or a jurisdiction of Canada to carry on business in Canada or a jurisdiction of Canada.

We thank you for this opportunity to provide comments on proposed NI 45-106.

Yours truly,



Rowland Kelly
Vice-President, Finance and Chief Financial Officer

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March 17, 2005

BY E-MAIL

Alberta Securities Commission
British Columbia Securities Commission
Manitoba Securities Commission
New Brunswick Securities Commission
Securities Commission of Newfoundland and Labrador
Registrar of Securities, Department of Justice, Government of the Northwest Territories
Nova Scotia Securities Commission
Registrar of Securities, Legal Registries Division, Department of Justice, Government of Nunavut
Ontario Securities Commission
Prince Edward Island Securities Office
Autorité des marchés financiers
Saskatchewan Financial Services Commission
Registrar of Securities, Government of Yukon

Dear Sirs/Mesdames:

Proposed National Instrument 45-106 - *Prospectus and Registration Exemptions*

We are writing in response to the Canadian Securities Administrators' ("CSA") Request for Comment in respect of Proposed National Instrument 45-106 – *Prospectus and Registration Exemption*s ("NI 45-106" or the "Proposed Rule") published December 17, 2004.

We strongly support the policy of harmonizing securities laws across Canada to make it easier and less costly for investors and issuers of securities to operate in an effectively regulated and competitive marketplace. However, we are concerned that the large number of jurisdiction-specific exceptions from the harmonization efforts provides little disincentive for individual jurisdictions to subsequently diverge from the "harmonized" rule. We are of the view that the fewer jurisdictional exceptions in the initial version of the Proposed Rule, the less likely jurisdictions will be to introduce further individual exemptions.

We note that for the most part our comparisons to current Canadian legislation use the current law of Ontario as a base.

Part 1: Definitions and Interpretation

(a) *Canadian financial institution*

We submit that the proposed new definition of a *Canadian financial institution* should be revised to require that a financial institution must be authorized to carry on business as a specified form of entity in Canada in order to benefit from treatment as an *accredited investor*. The analogous exemptions in Ontario Securities Commission ("OSC") Rule 45-501 – *Exempt Distributions* ("Rule 45-501") specifically links the legislation under which the accredited investor must be qualified to carry on business in Canada to the activity performed by the *accredited investor*. In order to avoid a potential interpretation of the definition as an entity merely authorized to carry on business in a jurisdiction of Canada (which would presumably include authorized to carry on business under corporate legislation), we submit that the part (c) of the definition of *Canadian financial institution* be revised to ensure that, for example, a trust company must be qualified to do business as a trust company rather than simply be authorized by an enactment to carry on business.

(b) *Accredited investor*

We wish to comment on certain aspects of the proposed definition of *accredited investor*. Part (e) of that definition provides that, except for a former limited market dealer, any individual who was once registered in a jurisdiction of Canada as a representative of a registered adviser is treated as an *accredited investor*. This provision is consistent with the current position under Rule 45-501. In circumstances where an individual's registration is terminated because of wrong-doing, in our view securities regulation should not afford such individual continued treatment as an *accredited investor*. Although it is arguable that securities regulation should not be concerned with protecting such an individual in his or her investment activities, by qualifying as an *accredited investor* such an individual will continue to enjoy access to investment prospects that are not available to the general public. We recommend that the definition should exclude from treatment as an *accredited investor* any individual whose registration as a representative of an adviser was terminated because of wrong-doing.

We support the expansion provided in part (l) of the definition of *accredited investor*. Compared to the current asset test applicable to an individual investor, the revised definition allows an individual who has substantial net assets (in excess of $5 million), but whose assets are not largely comprised of financial assets, to qualify as an *accredited investor*.

With respect to charities registered under the *Income Tax Act* (Canada), part (r) of the definition of *accredited investor* introduces a new requirement that such charities obtain advice. Under the current definition in Rule 45-501, any registered charity qualifies as an *accredited investor*. The new definition would require such charities to obtain advice from an eligibility adviser or adviser registered under the law of the jurisdiction of the charity. We are unaware of general abuse under the current regime and submit that securities regulation should emphasize the responsibility of charity trustees and other administrators

to take appropriate steps to manage charity funds, rather than requiring issuers to enquire about the quality of advice given to a registered charity before accepting an investment from such an entity. Therefore, we submit that it would be appropriate to maintain the current status and provide that registered charities are, *per se*, *accredited investors*.

(c) *Person*

Although the proposed definition of *person* comprises a helpful addition to the regulations, this definition should be broadened. As proposed, the definition would lead to uncertainty as to the forms of corporate organizations that qualify as *persons*. In that regard, we recommend replacing parts (b) and (c) of the definition with the following:

> "(b) a corporation, limited or unlimited liability company, other form of corporate organization, partnership, limited partnership, limited liability partnership, trust, fund, any organization analogous to the foregoing, any association, syndicate, organization or other organized group of *persons*, whether incorporated or not, and"

Part 2: Prospectus and Registration Exemptions

(a) Division 1: Capital Raising Exemptions

(i) Section 2.1: The rights offering exemption

We submit the meaning of Section 2.1 of NI 45-106 is currently unclear. One possible interpretation is that the proposed provision would extend the exemption to a trade by an issuer in any right to purchase securities of its own issue. Currently, the exemption only applies to a trade by an issuer in a right it has granted to purchase additional securities of its own issue. The proposed rule may be interpreted as applying to any trade by the issuer in any right to purchase its securities, even if that right did not originate with the issuer. We are concerned that under this provision of the Proposed Rule an issuer could rely on the exemption when trading in puts, calls, futures and other derivative rights relating to the purchase of that issuer's securities, even if those rights were not originally granted by the issuer. It is our view that rights offering exemptions are appropriately limited to trades in rights granted by an issuer to purchase additional securities of the issuer and that, therefore, the ambit of the proposed exemption be limited to rights that have originated with the issuer.

(ii) Section 2.3: The accredited investor exemption

Please refer to our comments with respect to Part 1 of NI 45-106. As noted in the request for comments, the proposed rule would also extend the *accredited investor* exemption to trades in investment funds by fully managed accounts where those accounts are managed by a registered adviser or similar specialist. We support this extension because it places the focus of regulation on the area where it is most appropriate and likely to be most effective, the regulation of advisers of fully managed accounts. We note that the Proposed

Rule would remain more restrictive in Ontario than in other jurisdictions. In Ontario, a trade by a fully managed account in securities of investment funds will only be exempt if it is made by an adviser that is registered or qualified to act in that capacity by the laws of any Canadian jurisdiction. In other Canadian jurisdictions, a fully managed account with an adviser so registered or authorized under a foreign law would also benefit from the exemption. While we appreciate the rationale of limiting this exemption to those fully managed accounts with advisors qualified in a Canadian jurisdiction, we submit that in the absence of evidence of its abuse, the OSC should reconsider this "Ontario exception" in the interests of harmonization with the other Canadian jurisdictions.

(iii) Section 2.4: The private issuer exemption

Section 2.4 of NI 45-106 restores the exemption for trades in the securities of a *private issuer* by specified categories of investors. We strongly support the reinstatement of this exemption.

(iv) Sections 2.5, 2.6 and 2.7: Family, friends and business associates exemption

While we appreciate the potential problems associated with extending exemptions from the prospectus and registration requirements to *close personal friends* and *close business associates* and prefer the exemption set out in Section 2.7(1) of the Proposed Rule, we submit that in the interests of harmonization the OSC reconsider adopting the broader provisions in section 2.5 of the Proposed Rule. The rationale for both of these exemptions is primarily based on the investor's greater comfort with the issuer as a result of a personal relationship with a principal of the issuer. It will always be difficult to establish that these relationships are sufficient to instil such comfort and to establish who should qualify as a *close personal friend* or a *close business associate.* However, it should be acknowledged that, at least in the case of the private company exemption found in the Proposed Rule (or the current closely held issuer exemption), these investors would be permitted to invest in such issuers with no more protection than that afforded by this "friends and associates" exemption in the Proposed Rule. We believe it may be useful to highlight to the investor that the exemption is premised solely on the relationship of the investor with the issuer's principal. One means to do so is to require the purchaser execute a certificate to the effect that the investor is a close personal friend or a close business associate of the director, executive officer, founder or control person, as the case may be, and *has known such person for a sufficient period of time to assess their capabilities and trustworthiness*. Such an additional document may help to focus the investor's awareness that the prospectus-exempt trade is reliant on the relationship between the parties.

(v) Section 2.8: Offering memorandum exemption

We support the view that the offering memorandum exemption set out in NI 45-106 should not be available under Ontario securities law. Given the extensive prescribed disclosure for an offering memorandum used in connection with this exemption under NI 45-106, we believe that it merely serves to create a simplified prospectus regime alongside the current

prospectus regime. As such, this exemption introduces additional unnecessary complexity and, given the differences in application between the other jurisdictions, confusion into the securities laws of Canada. In our view, this is inconsistent with the goal of creating a harmonized securities regime. We support the OSC's resistance to introducing this exemption in Ontario.

(vi) Section 2.10: Prescribed minimum amount exemption

We support the reintroduction of a prescribed minimum amount exemption. We submit that this is a useful addition to the securities regime as it facilitates private placements by providing a "bright line test", however, we note that the exemption, as written, differs slightly from the former exemption in Section 72(1)(d) of the *Securities Act* (Ontario) (the "OSA"). Accordingly, we submit that it would be prudent to clarify the Proposed Rule by incorporating into the exemption the concept of "aggregate acquisition cost" rather than rely on the explanation in the companion policy.

(b) Division 2: Transaction Exemptions

(i) Section 2.16: Take-over bid or issuer bid

We are concerned that the language in Section 2.16, "…a trade in a security under a take-over bid…", may be interpreted as being limited to trades by shareholders of the offeree issuer to the offeror. To clarify that this exemption is available in connection with share consideration provided by an offeror, we submit that the language should be amended to read "…a trade in a security in connection with a take-over bid…".

(c) Division 4: Employee, Executive Officer, Director and Consultant Exemptions

(i) Section 2.22: Definitions

We note that the new exemptions set out in NI 45-106 differ from existing exemptions in Multilateral Instrument 45-105 – *Trades to Employees, Senior Officers, Directors and Consultants* in the substitution of the concept of *executive officer* for *senior officer*. The definition of executive officer appears to be considerably broader than the definition of senior officer, and includes any individual who performs a policy-making function in respect of the issuer. We submit that in order to avoid confusion it may be prudent to clarify that this portion of the definition only pertains to the principal or core business of the issuer.

(d) Division 5: Miscellaneous Exemptions

(i) Section 2.30: Incorporation or organization

We agree that, due to the availability of other exemptions, the exemption contemplated by proposed Section 2.30 is unnecessary and need not be included in the final instrument.

If, notwithstanding the foregoing, this provision is included in the final instrument, we have one comment with respect to its wording. In contrast with OSA Section 72(1)(o), the current draft of Section 2.30 fails to provide a prospectus exemption for a trade by an issuer in a security of its own issue if the statute under which the issuer is incorporated requires the trade to be for a greater consideration or to a larger number of incorporators or organizers than are contemplated by subsection (1). This could be rectified by amending subsection (3) to provide that "the prospectus requirement does not apply to a distribution of a security in the circumstances referred to in subsections (1) and (2)".

(ii) Section 2.43: Conversion, exchange or exercise

According to the summary in respect of NI 45-106, the requirement to give prior written notice to the securities commission under proposed Section 2.43 appears intended to capture only trades in a security where the issuer is trading in a security of *another* issuer that is a reporting issuer. However, as drafted, the wording of Section 2.43(1)(b) in conjunction with Section 2.43(2) could be misconstrued as requiring an issuer to provide such notice to regulators in the case of trades of both securities of another issuer that is a reporting issuer and securities of its own issue where the issuer is, itself, a reporting issuer. We would therefore recommend clarifying the wording in this provision by inserting language in Section 2.43(1)(b) similar to that found in OSA Section 72(1)(h) so that the provision reads:

> subject to subsection (2), the issuer trades a security of a reporting issuer held by it to an existing security holder in accordance with the terms and conditions of a security previously issued by that issuer.

Part 4: Control Block Distributions

(a) Section 4.1: Control block distributions

The exemption regarding control block distributions found in Section 4.1 essentially provides for the same exemption as is currently available under National Instrument 62-101 – *Control Block Distribution Issues*. However, we would suggest replacing the proposed language under Subsection 4.1(3)(a)(i) with "has filed the reports required under the early warning requirements or files the reports required under Part 4 of NI 62-103," in order to clarify that an eligible institutional investor can avail itself of the exemption even if it does not itself participate in the alternative monthly reporting regime. Additionally, we note the typographical error in Subsection 4.1(4), which should be corrected by deleting "of" and replacing it with "in".

(b) Section 4.2: Trades by a control person after a take-over bid

We have no substantive comments with respect to the exemption in Section 4.2 for trades by a control person after a take-over bid but note that it now applies to a "take-over bid", instead of the present availability under Section 2.4 of Rule 45-501 to a "formal bid".

However, the present requirements of the exemption suggest that it will continue to apply only to formal bids and further clarification is unnecessary.

Part 5: Offerings by TSX Venture Exchange Offering Document

We agree that the exemption under Section 5.2 is not necessary for the Ontario market.

Please do not hesitate to contact me (416-863-5537) if you wish to discuss our comments further.

Yours very truly,

(signed) Robert S. Murphy

Robert S. Murphy

DE Capital Partners Inc.
156 Duncan Mill Rd.
Suite 12
Toronto
M3B 3N2

April 5, 2005

J. Stevenson
Ontario Securities Commission
jstevenson@osc.gov.on.ca

Re: Proposed National Instrument 45-106
Proposed Amendments to OSC Rule 45-501

Dear Sirs:

We are aware that the comment period regarding the above has passed however as we only recently learned of the issue, from a bulletin issued by the Ministry of Finance, we would ask that you consider these comments.

DE Capital Partners Inc. is a mortgage broker, registered under the Mortgage Brokers Act. One of our business activities is underwriting and syndicating mortgages.

In our view the removal of the exemption from the dealer and prospectus requirements of securities legislation for syndicated mortgages being undertaken pursuant to the Mortgage Brokers Act (the "Act") is not in the public interest.

For many years the Ministry of Finance has overseen the mortgage brokerage business and has broad powers to regulate it. We would suggest that the Ministry has the expertise and the background to best carry on in this role.

By way of background, syndicated mortgages are most often small transactions, ranging from $50,000 to several million dollars. There may be as few as two investors or as many as several dozen investors in most of these mortgages. Amounts invested per investor generally range from $25,000 at the low end to several hundred thousand dollars at the higher end. Some investors use their RRSP self directed accounts to invest in syndicated mortgages. By investing relatively small amounts in a variety of mortgages many investors get the benefit of a fixed yield and diversification. Interest rates of 8% to 10% are often available to investors, making mortgages an attractive and secure portfolio investment. On the other side of the equation are borrowers owning a wide range of residential and commercial properties who rely on the private mortgage syndication market to finance their requirements, which are not otherwise being met by the institutional lending community.

The prospectus or offering memorandum requirements under securities legislation are not well suited to this type of business activity.

Since approximately 1992 syndicated mortgages, by regulation under the Act, have made use of mandated disclosure forms (Form 1) which give the investing public key disclosure information, warnings as to investing in mortgages and a cooling off period prior to committing to invest. We submit that this process is working well and is not in need of any material change.

The Act, in any event, is now being completely revised and this is an opportune time for the Ministry of Finance to deal with any public policy issues regarding syndicated mortgages within its framework.

To remove the exemption and regulate this business under the securities legislation would mean two levels of regulation as mortgage brokers would still have to comply with the Act in terms of registration, education, administering mortgages and dealing with investor funds, as well as paying required fees and filing offering memorandums under the securities legislation. There would be no sense from a cost/benefit perspective to moving to this dual regulation regime.

In summary, we have a system now that is working and is relied on by a wide range of lenders and borrowers. There is no compelling reason to make changes.

Yours truly,

Tim Bankier
President

Desjardins Securities

March 8, 2005

Alberta Securities Commission
British Columbia Securities Commission
Manitoba Securities Commission
New Brunswick Securities Commission
Securities Commission of Newfoundland and Labrador
Registrar of Securities, Department of Justice,
Government of the Northwest Territories
Nova Scotia Securities Commission
Registrar of Securities, Legal Registries Division,
Department of Justice, Government of Nunavut
Ontario Securities Commission
Prince Edward Island Securities Office
Autorité des marches financiers
Saskatchewan Financial Services Commission
Registrar of Securities, Government of Yukon

Dear Sirs:

Re: Proposed National Instrument 45-106
and Proposed Amendments to OSC Rule 45-501

I want to thank the Canadian Securities Administrators for their initiative in harmonizing the private placement rules in Canada and for providing us with the opportunity to comment on the proposed rules.

Desjardins Securities Inc. is an investment banking firm with operations across the country. We assist our issuer clients in a range of financing activities. Different issuers, of course, require different forms of financing. What is optimal for a particular issuer at a particular time depends on the issuer's circumstances and requirements at that time. The availability of a menu of financing choices for issuers is conducive to efficient capital markets in Canada. One of the important choices available to an issuer is a private placement.

We are concerned that certain elements of the draft rules may diminish the opportunities where an issuer will decide (or be able) to effect a financing by way of private placement even if doing so would otherwise be the ideal financing alternative for the issuer at that time. The elements of concern are Section 1.5 of Proposed National Instrument 45-106 and Section 5.3 of the proposed

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amendments to OSC Rule 45-501 which provide, effectively, that any securities acquired by an underwriter (including one acting as an agent) pursuant to a private placement must be sold pursuant to a prospectus. Stated another way, securities purchased by an underwriter (including an agent) cannot be sold after the four month hold period that is available to any other accredited investor participant in a private placement.

The consequence of this is that an underwriter in a private placement will not buy the offered securities and therefor would not undertake a "bought deal" private placement or purchase the securities required to enable an agency offering to be fully subscribed. They would not do so because they would only be able to sell the securities so acquired by causing the issuer to file a prospectus. Further, an underwriter would not accept compensation warrants as part of the compensation for their services on a private placement as the underlying securities could be sold only by a prospectus. Underwriters would require additional cash commission instead which may not be an optimal use of the issuer's funds at that time.

More generally, it is not clear to us why underwriters should be treated any differently than any other accredited investor who participates in a private placement and be able to sell the securities purchased after the four month hold period has elapsed.

It is our submission that Section 1.3 of Proposed NI 45-106 and Section 5.3 of the proposed amended Rule 45-501 be eliminated. If that is not possible, we respectfully submit that these sections be stated not to apply to an underwriter (including an agent) who acts in connection with a private placement.

Thank you for the opportunity to comment on the proposed new rules.

Yours very truly,

Jeffrey F. Olin
Managing Partner, Ontario
Head of Investment Banking

Firm Capital Corporation

Mortgage Investment Bankers
1244 Caledonia Road
Toronto, Ontario
M6A 2X5
Tel: (416) 635-0221
Fax: (416) 635-1713

Via Email to: blaine.young@seccom.ab.ca
consultation-en-cours@lautorite.qc.ca
jstevenson@osc.gov.on.ca

March 30, 2005

VIA EMAIL TO:

Alberta Securities Commission
British Columbia Securities Commission
Manitoba Securities Commission
New Brunswick Securities Commission
Securities Commission of Newfoundland and Labrador
Registrar of Securities, Department of Justice,
Government of the Northwest Territories
Nova Scotia Securities Commission
Registrar of Securities, Legal Registries Division,
Department of Justice, Government of Nunavut
Ontario Securities Commission
Prince Edward Island Securities Office
Autorité des marches financiers
Saskatchewan Financial Services Commission
Registrar of Securities, Government of Yukon

Dear Sirs,

Re: Proposed National Instrument 45-106 and
Proposed Amendments to OSC Rule 45-501

Although we realize that the comment period in respect of the above noted matters expired on March 17, 2005, we are seeking the opportunity to provide comments on these proposals to the extent they relate to mortgage syndications. Our delay in commenting to date arises from the

fact that the Ministry of Finance (Ontario) issued a consultation draft of a new *Mortgage Brokerages, Mortgage Lenders and Mortgage Administrators Act* on March 21, 2005, which we received only on March 22, 2005, after the March 17, 2005 comment period expired. We thank you for accommodating our request to comment at this time.

Firm Capital Corporation is a company that is registered under the *Mortgage Brokers Act* (Ontario) and has been so registered since 1988. We are the mortgage banker to the publicly traded Firm Capital Mortgage Investment Trust (the "Trust"), and in that capacity have an exposure to and an understanding of securities laws, policies and practices. Firm Capital Corporation is in the business of originating, funding, purchasing, selling and servicing mortgage investments. Certain of these mortgage investments are syndicated by Firm Capital Corporation to sophisticated parties, including the Trust. In 2004, Firm Capital Corporation originated approximately $255 million of mortgage investments. We have originated well in excess of $1 billion of mortgage investments over the last five years.

It is the application of proposed NI 45-106 to syndicated mortgages that we wish to comment on at this time. Section 2.37 proposes to exempt trades in mortgages on real property by a licensed mortgage broker from the dealer and prospectus requirements of securities laws. However, Section 2.37(2) removes the application of this exemption to a syndicated mortgage. It is our submission that syndicated mortgages should NOT be excluded from this exemption. In other words, it is our view that trading in all mortgages on real property (including syndicated mortgages) should continue to be governed by mortgage broker or mortgage dealer legislation of a jurisdiction of Canada and not by proposed NI 45-106.

The Consultation Draft issued by Ontario's Ministry of Finance states as follows in Part IV – Other Matters:

> *Syndicated Mortgages*
>
> As a general rule, trades in mortgages are not subject to the registration and prospectus requirements of the *Securities Act* if the mortgages are sold by a person who is registered, or exempt from registration, under the *Mortgage Brokers Act*. Currently syndicated mortgages, (i.e. those in which there are two or more lenders) are treated in the same manner as other mortgages.
>
> Concerns have arisen that the current syndicated mortgage exemption does not provide adequate protection to investors given the potential complexity of these investments. To respond to these concerns, the Ontario Securities Commission, together with the other members of the Canadian Securities Administrators, recently published for comment a proposal to eliminate the registration and prospectus exemption for syndicated mortgages. The change is contained in proposed National Instrument 45-106 Prospectus and Registration Exemptions and proposed OSC Rule 45-501 Ontario Prospectus and Registration Exemptions.
>
> The Ontario Securities Commission, together with the other members of the Canadian Securities Administrators, published these proposals on December 17, 2004 for a 90-day comment period expiring on March 17, 2005.

> If the Canadian Securities Administrators' proposals are implemented, it is proposed that no duplicative regulation of syndicated mortgages be contained in the new *Mortgage Brokerages, Mortgage Lender and Mortgage Administrators Act*.

With respect, it is our submission that the mortgage broker legislation should not defer to securities legislation the regulation of this important element of the mortgage business. Rather, it is our view that the reverse should be the case. That is, the mortgage broker legislation should deal with the regulation of all aspects of the mortgage industry, including those dealing with mortgage syndication. This is especially so in the Province of Ontario where new mortgage broker legislation is being considered, providing a ready made opportunity for the appropriate regulatory regime applicable to mortgage syndications to be established.

Our view is informed by our experience in the mortgage business, with an exposure to securities legislation. An interest in a syndicated mortgage, although it has certain attributes of a security, is above all a mortgage on real property. Whether a mortgage is syndicated or not, mortgage broker legislation imposes specific obligations on a mortgage broker including with respect to the documentation that must be provided to investors, the record keeping function and obligations to borrowers. Certain information that is required by the current *Mortgage Brokers Act* (Ontario) to be provided to investors is obtained from borrowers who provide it to the mortgage broker pursuant to the provisions of the Act. The method and policies of accounting and record keeping for syndicated mortgages is governed under the *Mortgage Brokers Act* (Ontario) and will continued to be so governed under the successor legislation. The specialized nature of mortgage broker legislation can better tailor all related requirements (including licensing and disclosure) to the specialized nature of syndicated mortgages than can securities legislation which, of necessity, has broader application.

If mortgage syndications were governed by securities legislation, a dual registration regime would be created resulting in increased compliance costs and administrative burden as well as duplication and overlap of regulations. For instance, a mortgage broker who is registered under mortgage broker legislation who is involved in mortgage syndication would <u>also</u> be required to register under securities legislation (at least in Ontario where registration as a limited market dealer would be required if the mortgage syndications were privately placed, for instance to accredited investors). A disclosure document (likely an offering memorandum, but also possibly a prospectus) would be required under securities legislation which would be duplicative of the disclosure document required under mortgage broker legislation (in Ontario this is a Form 1 which we submit provides adequate and sufficient disclosure for a mortgage investor and is discussed more fully below). There would be ongoing compliance requirements <u>and costs</u> under two regulatory regimes which seems inconsistent with the general trend towards lessening paperwork and "red tape" in the business environment. Most importantly, it is not clear why the administrators of mortgage broker legislation from a public policy perspective do not have the expertise to regulate this sector of the mortgage brokerage sector, given that they will continue to regulate the mortgage brokerage industry as well as investments made by single private individuals.

Both securities legislation and mortgage broker legislation are interested in investor protection. The mortgage broker legislation includes investor protection provisions for mortgages placed to more than one person (i.e. syndicated mortgages) as well as to a single investor. These

protections include disclosure requirements and provisions relating to the administration and servicing of the mortgage investments. We would not expect that these requirements would be carved out of the mortgage broker legislation for syndicated mortgages and, consequently, unless syndicated mortgages are excluded from the purview of securities legislation both regimes would apply.

In addition, it is not always clear at the outset whether a mortgage will be syndicated or held by a single investor. This depends on the mortgage size and the interest and capacity of the first investor at the time the investor is approached in respect of the possible mortgage investment. By governing syndicated mortgages under securities legislation, unsyndicated mortgages would also be affected as the mortgage broker would need to anticipate at the outset the possibility of there being more than one investor even if the intention was for a single investor. This imposes an additional and unnecessary burden on all mortgages, not just syndicated ones.

It is also our experience that investors in syndicated mortgages are making a mortgage related decision and not an investment in securities decision, further supporting our submission that syndicated mortgages should be treated only under mortgage broker legislation. Notwithstanding the comment noted above in Part IV of the Consultation Draft, it is our experience that a syndicated mortgage is no more complex than a mortgage held by a single private individual as the underlying investment is the same. From an investor's perspective, whether a mortgage is syndicated or not is of no import to the investor other than with respect to the administration of the syndicated mortgage, which under the proposed Consultation Draft will be addressed in the new legislation in any event. The new legislation specifies that the disclosure required to be made to investors will be set out in regulations. These regulations could address any additional disclosure requirements considered to be appropriate respecting syndicated mortgages.

It is our view that the current *Mortgage Brokers Act* (together with the proposed successor legislation) deals appropriately with investor and borrower relationships and the obligations of a mortgage broker including the ongoing servicing of investor funds. It is our submission that the regulation of all mortgages, including syndicated mortgages, should continue to be governed under the mortgage broker legislation as is currently the case.

If the Canadian Securities Administrators determine that, notwithstanding the above noted submissions, mortgage syndications should continue to be excluded from the exemption in Section 2.37, it is our submission in the alternative that the following refinements to proposed NI 45-106 be made to accommodate the application of the proposed instrument to mortgage syndications:

(i) that the disclosure document typically required by mortgage broker or mortgage dealer legislation (augmented as required to describe any syndication related information) be permitted to be provided to potential investors without that document constituting an offering memorandum (and, for greater certainty, without the necessity of a statutory right of action for damages or rescission). It is assumed that the disclosure obligation under the mortgage broker or mortgage dealer legislation would remain in effect for syndicated mortgages even if the prospectus and registration requirements of securities legislation would also apply (this disclosure obligation will certainly apply for single private individual

investors in mortgages). The specialized disclosure requirements of mortgage broker or mortgage dealer legislation should satisfy any disclosure concerns without the necessity to create a disclosure document under dual disclosure regimes. Under Ontario's current *Mortgage Brokers Act*, this document is on Form 1: Investor/Lender Disclosure Statement for Brokered Transaction. A sample of Form 1 is attached. Furthermore, given the expectations of the mortgage investor, a standardized form (such as Form 1) facilitates the investment decision as it provides the information required to understand the opportunity and the related risks, and it does so in a uniform and consistent manner. Due to the requirement for a statutory right of action in an offering memorandum, additional disclosure may be required to be made which is not relevant to the investment decision but is required to provide the statutory right. In lieu of the statutory right, Part F of the Form 1 requires a certification that the Information Disclosure Summary has been completed in accordance with the *Mortgage Brokers Act* and is declared "to be accurate in every respect". It is submitted that this form of certification is a suitable substitute for the statutory right of action for damages or rescission;

(ii) that the report of exempt distribution contemplated by Section 6.1 of proposed NI 45-106 not be required in respect of a mortgage syndication. Disclosure of information as to the holders of an interest in a syndicated mortgage has no public benefit and the cost of preparing the filing and any related filing fee is a burden that would just be passed on to the borrower. In our view, there would be a cost to the requirement with no apparent benefit;

(iii) that in jurisdictions (such as Ontario) where registration as a limited market dealer would be required to syndicate mortgages on a private placement basis there would be a grace period of, say, four months after the proposed instrument is enacted for mortgage brokers to seek and obtain limited market dealer registration status. This would mean that the dealer registration exemption would not be eliminated for syndicated mortgages during this phase in period. The reason for this is that mortgage brokers such as ourselves do not know whether we should be registering as a limited market dealer and will not know for certain until the national instrument is proclaimed. It is an unfair burden imposed on a mortgage broker to ask it to commence this registration process before knowing whether the expense is warranted; and

(iv) that certain of the exemptions from the prospectus and registration requirements that are tied to the relationship with an issuer be extended to the equivalent relationship with a mortgage broker. For instance, Section 2.4(1) of proposed N1 45-106 contemplates various relationships with an issuer that is a private issuer. The term "issuer" does not work with a syndicated mortgage as technically the issuer of a syndicated mortgage is the borrower and the mortgage broker may be considered a selling securityholder. Consequently, we submit that an equivalent to Section 2.4 should be introduced for the syndication of mortgages to up to 50 individuals, substituting the term "mortgage broker" for "issuer" in that section (for example, "a director, officer, employee, founder or control person of the issuer" would be changed to "a director, officer, employee,

founder or control person of the mortgage broker"). Similarly, an equivalent exemption to Section 2.7 (Family, founder and control person) should be introduced again substituting "mortgage broker" for "issuer" in that section. Lastly, an equivalent exemption to Section 2.8 (Affiliates) should be introduced, again substituting "mortgage broker" for "issuer" in that section. There may be other exemptions which are available only outside Ontario which it may also be appropriate to treat in the same way. In the non-syndicated mortgage context, the Canadian Securities Administrators have already determined that the persons included in Sections 2.4, 2.7 and 2.8 have a sufficiently close relationship to an issuer that the protections afforded by the registration and prospectus requirements are not required. It is submitted that the equivalent relationships to a mortgage broker should be afforded the same treatment. It is only because the issuer of a mortgage is the borrower, and not the mortgage broker, that the exemptions technically do not apply already. This technical deficiency needs to be addressed if syndicated mortgages are required to become subject to the securities regulatory regime.

We would expect that changes corresponding to the above would be required in Sections 5.2 (Removal of registration exemptions – market intermediaries), Part 6 (Offering Memorandum) and Part 7 (Reporting Requirements) of the proposed amendments to OSC Rule 45-501.

The decisions with respect to the regulation of mortgage syndications have widespread implications for our industry, our business and our company. Consequently, we thank you for the opportunity to comment on the proposed new rules and for accommodating our request to comment beyond the March 17, 2005 comment period.

Please feel free to contact me should you have any questions or require any further information.

Yours very truly,
FIRM CAPITAL CORPORATION
PER:

Eli Dadouch
President and Chief Executive Officer

cc: Mike Colle, Parliamentary Assistant to the Minister of Finance (Ontario)
E-Mail: mikecolle.mbconsultations@fin.gov.on.ca

cc: Mark Webb, Senior Director Professional Affairs, CIMBL
E-Mail: mwebb@cimbl.ca

Attachment: Form 1 under the *Mortgage Brokers Act* (Ontario)

Form 1
Mortgage Brokers Act

Transaction No.:

INVESTOR/LENDER DISCLOSURE STATEMENT FOR BROKERED TRANSACTIONS

IMPORTANT: THIS FORM IS REQUIRED BY LAW AND WILL PROVIDE THE PROSPECTIVE INVESTOR/LENDER WITH IMPORTANT INFORMATION.

THE MORTGAGE BROKER CANNOT RECEIVE ANY MONEY FROM YOU OR ENTER INTO AN AGREEMENT TO RECEIVE MONEY FROM YOU UNTIL AT LEAST 48 HOURS (EXCLUDING SUNDAYS AND HOLIDAYS) AFTER YOU HAVE RECEIVED THIS INFORMATION.

CAUTION

ALL MORTGAGE INVESTMENTS CARRY A RISK. YOU SHOULD VERY CAREFULLY ASSESS THE RISK OF THIS MORTGAGE INVESTMENT BEFORE MAKING A COMMITMENT.

IN GENERAL, THE HIGHER THE RATE OF RETURN, THE HIGHER THE RISK OF THE INVESTMENT.

INEXPERIENCED INVESTORS ARE NOT ADVISED TO ENTER INTO MORTGAGE INVESTMENTS.

YOU ARE STRONGLY ADVISED TO OBTAIN INDEPENDENT LEGAL ADVICE BEFORE COMMITTING TO INVEST.

THIS MORTGAGE INVESTMENT IS NOT INSURED BY THE GOVERNMENT OF ONTARIO.

THIS MORTGAGE INVESTMENT CANNOT BE GUARANTEED BY THE MORTGAGE BROKER. IF YOU ARE NOT PREPARED TO RISK A LOSS, YOU SHOULD NOT CONSIDER MORTGAGE INVESTMENTS.

THE MORTGAGE BROKER CANNOT MAKE PAYMENTS TO YOU EXCEPT FROM PAYMENTS OF PRINCIPAL AND INTEREST MADE BY THE BORROWER UNDER THE MORTGAGE. THEREFORE, THE MORTGAGE BROKER CANNOT CONTINUE MORTGAGE PAYMENTS TO YOU IF THE BORROWER DEFAULTS.

IF THIS INVESTMENT IS FOR A MORTGAGE TO FUND A DEVELOPMENT, CONSTRUCTION OR COMMERCIAL PROJECT, THE REPAYMENT OF THIS INVESTMENT MAY DEPEND ON THE SUCCESSFUL COMPLETION OF THE PROJECT, AND ITS SUCCESSFUL LEASING OR SALE.

IF YOU ARE ONE OF SEVERAL INVESTORS IN THIS MORTGAGE, YOU MAY NOT BE ABLE TO ENFORCE REPAYMENT OF YOUR INVESTMENT ON YOUR OWN IF THE BORROWER DEFAULTS.

YOU SHOULD INSPECT THE PROPERTY OR PROJECT AND THE SURROUNDING AREA BEFORE INVESTING.

THE ATTACHED DECLARATIONS AND DISCLOSURE SUMMARY ARE NOT INTENDED TO BE A COMPREHENSIVE LIST OF FACTORS TO CONSIDER IN MAKING A DECISION CONCERNING THIS INVESTMENT. YOU SHOULD SATISFY YOURSELF REGARDING ALL FACTORS RELEVANT TO THIS INVESTMENT BEFORE YOU COMMIT TO INVEST.

FIRM CAPITAL CORPORATION

Date: March 30, 2005

PER: _____
Signature of Mortgage Broker, or of a person authorized to sign on behalf of the mortgage broker

_____
PRINT NAME OF PERSON SIGNING

ACKNOWLEDGEMENT

, ,of

acknowledge receipt of this Caution, signed by the mortgage broker.

Date: _____ Signature: _____

Form 1
Mortgage Brokers Act

Transaction No.:

DECLARATION BY THE MORTGAGE BROKER

For the purpose of this declaration, two persons are "related"if they share any relationship other than an arm's length business relationship. For example, a shareholder, director, officer, partner or employee of a mortgage broker is related to the mortgage broker.

This declaration is made by FIRM CAPITAL CORPORATION
Name of mortgage broker

The mortgage broker does/does not [choose one] have or expect to have a direct or indirect interest in the property that is the subject of this mortgage investment.
EXPLAIN:

A person related to the mortgage broker does/does not [choose one] have or expect to have a direct or indirect interest in the property that is the subject of this mortgage investment.
EXPLAIN:

The borrower is/is not [choose one] related to the mortgage broker.
EXPLAIN:

The borrower is/is not [choose one] related to an officer, director, partner, employee or shareholder of the mortgage broker.
EXPLAIN:

The individual or company that appraised the property is/is not [choose one] related to the mortgage broker.
EXPLAIN:

The proceeds of this investment will/will not [choose one] be used to refinance, pay out, redeem or reduce an existing mortgage on this property.
EXPLAIN:

If this investment is a purchase of an existing mortgage or a portion of an existing mortgage the mortgage is/is not [choose one] now in default and has/has not [choose one] been in default in the preceeding twelve months.
EXPLAIN:

The mortgage broker does/does not [choose one] expect to gain any interest or benefit from this transaction other than the fees disclosed in section D of the attached Information Disclosure Summary.
EXPLAIN:

The mortgage broker has fully complied with all requirements of the Mortgage Brokers Act and its regulations.

I have fully completed the above Declaration by the Mortgage Broker in accordance with the Mortgage Brokers Act and regulations and declare it to be accurate in every aspect.

FIRM CAPITAL CORPORATION

PER: _____
Signature of Mortgage Broker, or of a person authorized to sign on behalf of the mortgage broker

Date: March 30, 2005

_____
PRINT NAME OF PERSON SIGNING

ACKNOWLEDGEMENT

I,
acknowledge receipt of this Declaration by the Mortgage Broker, signed by the mortgage broker.

_____ _____
Date Signature

Form 1
Mortgage Brokers Act

Transaction No.:

INFORMATION DISCLOSURE SUMMARY

PART E OF THIS SUMMARY LISTS DOCUMENTS THAT MUST ACCOMPANY THIS SUMMARY AND THAT MUST BE PROVIDED TO YOU AT LEAST 48 HOURS (EXCLUDING SUNDAYS AND HOLIDAYS) BEFORE YOU COMMIT TO INVEST. YOU SHOULD EXAMINE THE ATTACHED DOCUMENTS CAREFULLY BEFORE YOU MAKE AN INVESTMENT DECISION. YOU SHOULD NOT RELY SOLEY ON THIS DISCLOSURE SUMMARY.

A. PROPERTY/SECURITY TO BE MORTGAGED

1. Legal and Municipal address of the property:

2. Type of Property:

☐ Property with existing buildings
- ☐ Single family residential
- ☐ One-to-four unit residential
- ☐ Five or more unit residential
- ☐ Commercial
- ☐ Industrial
- ☐ Other

☐ Vacant land, development or construction project.
Detail of project/proposed use:

☐ Other (Detail)

3. Property Taxes:
Annual property taxes:$

Are taxes in arrears?
☒ NO
☐ YES Amount in arrears:$

4. Zoning
Is the zoning on the property appropriate for the proposed use?

☐ YES
☒ NO If "NO", details:

5. Appraisal

☐ No appraisal has been done on the property.
OR
☐ An appraisal has been done on the property
For all properties, appraised "as is" value:

For development and construction projects
projected market value when project is complete:

Date of appraisal:
Name and address of appraiser:

B. MORTGAGE PARTICULARS

1. Type of mortgage
Your investment represents:
☐ the entire mortgage
OR
☐ a portion of the mortgage
Your portion represents % of the total.
other parties have an interest in this mortgage.
In what name is/will the mortgage be registered:

2. Existing or new mortgage
☐ An existing registered mortgage or portion of an existing registered mortgage is being purchased
OR
☐ Your investment will fund a new mortgage or portion of a new mortgage that has not yet been registered.

3. Administered mortgage
Will the mortgage be administered for you?

☒ NO
☐ YES If "YES", name and address of administrator:

4. Terms of the Mortgage

Amount of your investment:$
Face value of the mortgage:$

Interest rate is fixed at % per annum
OR
Interest rate is variable. Explain:

Compound Period: SEMI ANNUALLY

Monthly payments by borrower:$
Monthly payments to you :$
(See Part D for fees charged to you)
Term: Amortization: yrs
Maturity Date :
Balance on maturity:
Borrowers first payment due:

Terms and conditions of repayment:

Form 1
Mortgage Brokers Act

Transaction No.:

B. MORTGAGE PARTICULARS (continued)

5. Rank of mortgage (according to information from borrower)

The mortgage to be purchase/advanced is/will be a:

☐ First ☐ Second ☐ Third ☐ Other:

Prior encumbrances (existing or anticipated):
☐ None OR

a) Priority: Face amount :$
Amount owing:$
In default? ☐ Yes ☒ No

Name of Mortgagee:

b) Priority: Face amount :$
Amount owing:$
In default? ☐ Yes ☒ No

Name of Mortgagee:
Others:

6. Loan to value ratio (according to information from) borrower)

a) Total of prior encumbrances: $

b) Amount of this mortgage: $

c) Total amount of mortgages: $
(a + b)

d) Appraised "as is" value: $
(from Part A)

e) Loan to "as is" value: %
(c/d x 100)

f) Projected value: $
(where appropriate)

g) Loan to "projected value" ratio: %
((c/f) x 100)

C. THE BORROWER

Name and Address of borrower:

IMPORTANT:FINANCIAL INFORMATION ABOUT THE BORROWER'S ABILITY TO MEET THE MORTGAGE PAYMENTS MUST BE ATTACHED TO THIS DISCLOSURE SUMMARY

D. FEES

1. Fees and charges payable by the investor:

Mortgage broker fee/commission/other costs: $

Approximate legal fees and disbursements: $

Administration fees (where applicable): $

Any other charges: $
Specify

Total: $

2. Fees and costs payable by the borrower:

Amount	Paid to	Purpose
$		
$		
$		
$		
$		

E. ATTACHED DOCUMENTS

IMPORTANT: YOU SHOULD REVIEW THE FOLLOWING DOCUMENTS CAREFULLY AND ASSESS THE RISKS OF THIS INVESTMENT BEFORE COMMITTING TO INVEST. YOU SHOULD CHECK THAT ALL DOCUMENTS ARE CONSISTENT WITH THIS DISCLOSURE SUMMARY. THE FOLLOWING DOCUMENTS MUST BE ATTACHED:

1. If the statement concerns an existing mortgage, a copy of the mortgage
2. If an appraisal of the property has been done in the preceding twelve months and is available to the mortgage broker a copy of the appraisal.
3. If an agreement of purchase and sale in respect of the property has been entered into in the preceding twelve months and is available to the mortgage broker, a copy of purchase and sale.
4. If a copy of an appraisal of the property is not delivered to you, documentary evidence of the property's value, other than an agreement of purchase and sale.
5. Documentary evidence respecting the borrower's ability to meet the mortgage payments, such as a credit bureau report or a letter from an employer disclosing the borrowers earnings.
6. If you request, a copy of the borrower's application for a mortgage.
7. If the mortgage is a new mortgage, documentary evidence of any down payment made by the borrower for the purchase of the property.
8. A copy of any agreement that you may be asked to enter into with the mortgage broker.

Form 1
Mortgage Brokers Act

Transaction No.:

E. ATTACHED DOCUMENTS (continued)

IMPORTANT: THE MORTGAGE BROKER IS ALSO REQUIRED TO PROVIDE YOU WITH ALL OTHER INFORMATION AN INVESTOR OF ORDINARY PRUDENCE WOULD CONSIDER TO BE MATERIAL TO A DECISION WHETHER TO LEND MONEY ON THE SECURITY OF THE PROPERTY, SO THAT YOU CAN MAKE AN INFORMED DECISION BEFORE YOU COMMIT TO INVEST. THIS INFORMATION MIGHT INCLUDE THE FOLLOWING:

1. If the mortgage is for a construction or development project,
   i. a detailed description of the project,
   ii. a schedule of the funds that have been advanced or are to be advanced to the borrower, and
   iii. the identity of any person wo will monitor the disbursements of funds to the borrower and the use of those funds by the borrower.

2. If the property is rental property, details of leasing arrangements and vacancy status.

3. Environmental considerations affecting the value of the property.

F. CERTIFICATION

This Information Disclosure Summary has been completed by:

FIRM CAPITAL CORPORATION
1244 Caledonia Road
Toronto, Ont. M6A 2X5

I have fully completed the above Information Disclosure Summary in accordance with the Mortgage Brokers Act and regulations and declare it to be accurate in every respect.

FIRM CAPITAL CORPORATION

Date: March 30, 2005

PER: _____

Signature of Mortgage Broker, or of a person authorized to sign on behalf of the mortgage broker

_____

Print name of person signing

ACKNOWLEDGEMENT

I, ,of

acknowledge receipt of this Information Disclosure Summary, signed by the mortgage broker.

I understand that the mortgage broker cannot accept any money from me or require me to enter into an agreement to receive money from me until at least 48 hours (excluding Sundays and holidays) after receipt by me of this form.

Date:

_____

Signature

One copy of this form must be provided to the prospective investor, and one copy must be retained by the mortgage broker

FOREMOST
FINANCIAL
CORPORATION

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April 6, 2005

VIA EMAIL TO:

Alberta Securities Commission
British Columbia Securities Commission
Manitoba Securities Commission
New Brunswick Securities Commission
Securities Commission of Newfoundland and Labrador
Registrar of Securities, Department of Justice,
Government of the Northwest Territories
Nova Scotia Securities Commission
Registrar of Securities, Legal Registries Division,
Department of Justice, Government of Nunavut
Ontario Securities Commission
Prince Edward Island Securities Office
Autorité des marches financiers
Saskatchewan Financial Services Commission
Registrar of Securities, Government of Yukon

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Jstevenson@osc.gov.on.ca

Dear Sirs:

Re: Proposed National Instrument 45-106 & Proposed Amendments to OSC Rule 45-501

The following is submitted for consideration by Foremost Financial Corporation ("Foremost") as one mortgage broker's perspective of the subject proposed changes and their potential ramifications for the mortgage brokerage industry and its clientele.

Background

Whereas we acknowledge that the comment period with respect to the above noted matter expired as of March 17, 2005, we request the opportunity to provide comment on these proposals as they relate to mortgage syndications. Our delayed response is a direct result of the fact that we learned of this issue only on March 21, 2005 when the Ministry of Finance (Ontario) issued a consultation draft of a new Mortgage Brokerages, Mortgage Lenders and Mortgage Administrators Act.

Foremost is a company registered under the Mortgage Brokers Act (Ontario). It was founded in 1986 and during that period has been active in Mortgage Brokerage and Syndication of Mortgages. Foremost is in the business of originating, funding, purchasing, selling and administering Mortgages. Foremost administers a portfolio of Mortgages in the 50 million dollar range on an ongoing basis.

Application of the proposed NI 45-106, section 2.37 proposes to exempt trades in Mortgages on Real Property by a licensed Mortgage Broker from the dealer and prospectus requirements of securities laws. However section 2.37(2) removes the application of this exemption in the case of a syndicated mortgage. The Consultation Draft issued by Ontario's Ministry of Finance appears to rationalise the removal of this exemption on the basis that "concerns have arisen that the current syndicated mortgage exemption does not provide adequate protection to investors given the potential complexity of these investments". The basis for these concerns or the perceived complexity is not provided. We appear to have a solution without a clearly identified problem.

Foremost Recommendation

It is our submission that syndicated mortgages should not be excluded from this exemption and that the trading of all mortgages should continue to be governed by Mortgage Broker or Mortgage Dealer legislation in the appropriate jurisdiction in Canada. Any attempt to improve the protection of investors is applauded but should be achieved in consultation with the Mortgage Brokerage Industry based on an analysis of real risks to Investors and should take into consideration the issues of Mortgagors who are also clients of the Mortgage Brokerage Industry.

Rationale

- Unlike securities where the beneficiary of the deal is the issuer, the primary beneficiary in a syndicated mortgage is another consumer who requires funding and a timely response i.e. a Mortgage Broker has two consumers whose interests must be attended to and protected: the borrower and the lender. In fact a mortgage would only be analogous to a security if the issuer was the Mortgagor and as such the applicable securities legislation would not work as presently worded if the syndicating party (Mortgage Broker) is deemed to be the issuer of the security;
- Mortgages (whether syndicated or not) are instruments which are very distinct from "Securities" and dealing with them under a dual regulatory regime would add cost, complexity and the potential for conflicting requirements.
- It is not always clear at the outset whether a mortgage will be sold to one investor or a group and thus there would be the need to meet the potentially conflicting requirements of both regimes.
- There is no significant increase in the clarity or complexity of risk in a mortgage if it is sold to one entity or is syndicated and the assumption that this is so, betrays a lack of understanding of the risks.
- No public benefit or mitigation of risks to investors would be accomplished by the public registration of the holders of an interest in a syndicated mortgage and the potential exists for unprecedented intrusion into the privacy of Mortgagors who typically are private individuals and whose financial status and capability represent the most significant risk in a Mortgage, whether syndicated or not.

- Adding a significant regulatory layer to the mortgage granting process would greatly add to the cost and negatively impact the consumer service available to borrowers. It would reduce the number of players in the mortgage lending business and effectively give a huge and immediate advantage to institutional lenders who would no longer have to compete with alternate providers. The borrowing consumer would thus be deprived of a truly competitive marketplace and mortgage pricing/availability would reflect that lack of competition. Similarly, lenders/Investors would be faced with a less competitive marketplace in which to place their funds;
- Removal of the exemption as contemplated in Section 2.37(2) would mean that any mortgage syndication would likely take place under the Accredited Investor provisions of a Private Placement. Current definitions of Accredited Investors do not make it clear that holdings of Real Estate or Mortgage Receivables may be used by potential Accredited Investors when certifying that total assets held exceed $1 million. Investors in Syndicated Mortgages often hold a significant portion of their assets in such instruments. This is usually because Real Estate and Mortgages thereon are the area of expertise of such investors. It seems perverse to institute a change in pursuit of consumer protection and exclude investment by the very people who have expertise and substantial assets in Real Estate and Mortgage receivable assets while restricting access to that market to those whose area of expertise is other instruments i.e. Cash and securities. Clarification that holdings in Real Estate and Mortgages receivable can be included in the assets that add to $1 Million would be helpful in this particular regard.
- Excluding Non Accredited investors from the Syndicated Mortgage Market altogether is neither desirable nor fair to informed and knowledgeable investors who want to make investment decisions of their own free will. To permit that market to appropriately access Syndicated Mortgage Investments will require a major rewrite of existing OSC rules based on knowledge of how the business marketplace actually operates.
- The imposition of increased costs and reduced access to funding would restrict the ability of small business builders to compete with the major builders, thus reducing the choice available to the ultimate consumer as well as placing a high level barrier to entry for small builders.
- The existing regime in Ontario has been working with remarkably few issues of moment coming to the attention of the Industry (i.e. it isn't broke-so why fix it?). We can see no evidence of a Cost/Benefit analysis that would justify this change.

A Proposed Way Forward

- The consultation process currently underway to update the Mortgage Brokerages, Mortgage Lenders and Mortgage Administrators Act presents a timely opportunity to deal with any shortcomings in present consumer protection afforded to the Investor and borrower clients of Mortgage Brokers.
- The Industry and the Ministry of Finance should work together to identify any risks and shortfalls in consumer protection that may require attention.
- The mitigation of those risks and shortfalls should proceed out of clearly identified issues arising from this consultation.

We appreciate the time you have taken to read this letter and consider its commentary.

Yours Truly
Foremost Financial Corporation

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President
Ext. 222

Goodmans LLP

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March 8, 2005

Alberta Securities Commission
British Columbia Securities Commission
Manitoba Securities Commission
New Brunswick Securities Commission
Securities Commission of Newfoundland and Labrador
Registrar of Securities, Department of Justice,
Government of the Northwest Territories
Nova Scotia Securities Commission
Registrar of Securities, Legal Registries Division,
Department of Justice, Government of Nunavut
Ontario Securities Commission
Prince Edward Island Securities Office
Autorité des marches financiers
Saskatchewan Financial Services Commission
Registrar of Securities, Government of Yukon

Dear Sirs:

Re: Request for Comments for Proposed National Instrument 45-106 and Consequential Amendments

Thank you for the opportunity to comment on the Proposed National Instrument 45-106: Prospectus and Registration Exemptions ("Proposed NI 45-106") and on the consequential amendments arising from the proposed instrument. The Canadian Securities Administrators are to be commended for their initiative to harmonize the prospectus and registration exemptions and to consolidate the various exemptions into one instrument.

The purpose of this letter is to comment on one specific provision of the proposed instrument which would have a prejudicial, and presumably inadvertent, consequence on capital markets participants particularly to registered dealers involved in a bona fide private placement of securities, whether on an underwritten or agency basis. The provision in question is Section 1.5 of Proposed NI 45-106 which provides as follows:

> Under this Instrument, the only exemption available for a trade in a security where the purchaser is acting as an underwriter is section 2.34.

Section 2.34 of Proposed NI 45-106 exempts from the prospectus and registration requirements the purchase by an underwriter or a trade by an underwriter to another underwriter. By virtue of Section 2.13 of Multilateral Instrument 45-102: Resale of Securities (and the proposed

amendment to Appendix F of that instrument) any subsequent trade by an underwriter of securities acquired pursuant to Section 2.34 of Proposed NI 45-106 is a distribution.

Related to the foregoing is Section 5.3 of the proposed amendment to Ontario Securities Commission Rule 45-501: Ontario Prospectus and Registration Exemptions ("Amended 45-501") which provides as follows:

> No exemption in this Rule is available for a trade in a security where the purchaser is acting as an underwriter.

The effect of the foregoing is accurately described in the Request for Comments as follows:

> *Section 1.5 Underwriter Exemption*
>
> Currently purchasers acting as underwriters can purchase securities under the accredited investor exemption available in section 2.3 of the Existing Rule 45-501 rather than under clause 72(1)(r) of the Act. This allows purchasers acting as underwriters to substitute the indefinite hold period that attaches to trades made in reliance on clause 72(1)(r) with the four month hold period that applies to trades made in reliance on the accredited investor exemption. The purpose of section 1.5 is to prevent purchasers acting as underwriters from selling securities to the public without a prospectus.

In considering the implications of these proposed changes, it is critical to keep in mind the definition of underwriter set out in Section 1(1) of the *Securities Act* (Ontario). That definition states, in part, that an "underwriter" is:

> a person or company who, as principal, agrees to purchase securities with a view to distribution or who, as agent, offers for sale or sells securities in connection with a distribution (emphasis added)

The stated purpose of Section 1.5 of Proposed NI 45-106 (and the related proposed Section 5.3 of Amended 45-501) (collectively, the "Proposed Amendments") is to prevent persons from purchasing securities as an "underwriter" (both in the commercial sense of the word and within the meaning of the extended definition of the *Securities Act*) and then reselling the securities after four months without the protections of a prospectus. It is not clear why, as a policy matter, this poses a concern in that a four month hold period has been accepted in the general private placement environment. If an "underwriter" is prepared to purchase securities and hold them for four months, it is submitted that an underwriter should not be prohibited from selling these securities. It is further submitted that an underwriter should be treated no differently than any other private placement purchaser who may purchase all or a significant portion of a private placement offering be able to sell the securities after the hold period expires or pursuant to another exemption (for instance, to an

accredited investor) where the purchaser must continue to hold the securities for the balance of the four month hold period.

Specific concerns which arise from the Proposed Amendments are described below.

CHILLING EFFECT ON UNDERWRITTEN PRIVATE PLACEMENTS

A registered dealer sometimes participates in an "underwritten private placement" whereby the dealer commits to purchase securities pursuant to a private placement with the intention of identifying substitute purchasers to actually purchase the offered securities at the closing. By virtue of the Proposed Amendments, if a substitute purchaser were not identified for a portion of the private placement offering, that portion which the dealer acquires on closing can only be sold by the underwriter by way of a prospectus. The effect of the Proposed Amendments is that dealers will be reluctant to commit to an underwritten private placement (for fear of not having an efficient or effective way to sell the securities which a substitute purchaser has not purchased at the closing), thereby depriving issuers of the certainty that a financing of this kind affords.

AGENT PURCHASING A PORTION OF THE OFFERING TO ENSURE THE SUCCESSFUL COMPLETION OF A PRIVATE PLACEMENT FINANCING

The extension of the Proposed Amendments to a conventional private placement financing pursuant to which a registered dealer acts as an agent also has implications which are prejudicial and presumably inadvertent. Two such implications are described below. In a typical agency private placement, a registered dealer is retained as an agent to facilitate a distribution of securities. As it is an agency offering, the registered dealer does not intend to purchase the securities as a principal. Occasionally there are circumstances (such as where a potential investor has not completed the necessary subscription form in time or where the agency offering has not been fully subscribed as at the closing date) where, to assist the issuer and facilitate a successful offering, the agent might subscribe for the remaining securities with a view to reselling them shortly after closing on a private placement basis. The agent generally does not intend to hold the securities for an extended period of time and certainly not through the entire four month hold period. Prior to the Proposed Amendments the agent would purchase these securities as an accredited investor and sell the securities to another accredited investor (a possibility being foreclosed by the Proposed Amendments). Currently, if the agent acquires the securities as an accredited investor and subsequently sells the securities within the four month hold period, the hold period will continue until the end of the four months commencing on the date the agent acquired the securities. [1]

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[1]Section 1.8 of Companion Policy 45-102 to Multilateral Instrument 45-102: Resale of Securities.

It should be noted that the exemptions available to a consultant in Division 4 of Article 2 of Proposed NI 45-106 are not available as the services provided by the agent are related to a distribution and as such an agent could not be a consultant as defined in Section 2.22 of proposed NI 45-106.

The effect of the Proposed Amendments is that an agent acting on a private placement would not be inclined to perform this "stand in" role to facilitate a successful offering because if it did, the agent would be able to sell the securities it so acquired only by requiring the issuer to file a prospectus to do so. Consequently, private placement transaction closings would be delayed (to ensure all required paperwork is in place and the offering is completely sold) or be required to be completed at a smaller offering size. The elimination of this facilitating role of an agent in a private placement financing would not be beneficial to issuers, private placement investors or the agents themselves.

UNDERWRITER RECEIVING COMPENSATION WARRANTS

It is entirely typical in a private placement (whether underwritten or on an agency basis) for the dealer to receive compensation warrants which are exercisable for a period following closing (often up to two years). The compensation warrants are intended to compensate the dealer for its efforts in connection with the financing and allow for a lower cash commission to be paid by the issuer to the dealer (allowing more of the cash proceeds of the offering to be received by the issuer). Traditionally, the compensation warrants have been issued to the agent pursuant to the accredited investor exemption and, upon exercise, the underlying shares could be sold following a four month hold period.

The Proposed Amendments would prohibit the dealer from effecting the trade in the underlying securities without a prospectus being filed.

It is not apparent that there is any prejudice in a dealer in a private placement being able to exercise compensation warrants received by it in connection with the offering and selling the underlying securities after four months. Typically, the compensation warrants do not represent more than 10% of the securities offered in the private placement and consequently the effect of the exercise of the compensation warrants and the sale of the underlying securities would not have a significant impact on the capital markets.

Requiring the securities underlying compensation warrants to be sold only pursuant to a prospectus would require dealers to either forego compensation warrants in return for a higher cash commission or require the issuer to file a prospectus (and incur the related expenses) for the sole purpose of qualifying a sale of securities underlying the compensation warrants. It is suggested that the benefit to the capital markets of the foregoing (if any) are far outweighed by the costs and other burdens of the Proposed Amendments.

SUGGESTED AMENDMENT

In light of the foregoing, it is respectfully suggested that the Proposed Amendments be eliminated. If, as a policy matter, it is determined that the Proposed Amendments should be maintained, it is alternatively suggested that Section 1.5 of Proposed NI 45-106 and Section 5.3 of Amended 45-501 specifically provide that these sections do not apply to an underwriter (including an agent) who acts in connection with a bona fide private placement distribution.

We thank you again for the opportunity to comment and would be pleased to answer any questions you may have.

Yours very truly,

David Matlow

GOODMANS\MATLOWD\5111235.2

"Richard Tattersall"
<Richard@heathbridge.com>

2005-03-16 13:52

To <blaine.young@seccom.ab.ca>,
<consultation-en-cours@lautorite.qc.ca>

cc Subject Comment on CSA 45-106

March 16, 2005

Alberta Securities Commission
British Columbia Securities Commission
Manitoba Securities Commission
New Brunswick Securities Commission
Securities Commission of Newfoundland and Labrador
Registrar of Securities, Department of Justice, Government of the Northwest Territories Nova Scotia Securities Commission
Registrar of Securities, Legal Registries Division, Department of Justice, Government of the Nunavut
Ontario Securities Commission
Prince Edward Island Securities Office
Autorité des marchés financiers
Saskatchewan Securities Commission
Registrar of Securities, Government of Yukon

Re. Implementing Changes to National Instrument 45-106 *Prospectus and Registration Exemptions* (NI 45-106)

We strongly support the proposed change to *Section 2.3 - Accredited Investors*. This change would enable fully managed accounts in Ontario to invest in securities of investment funds in reliance on the accredited investor exemption.

There are several reasons we support this:

1. It provides the flexibility for investment counselors such as ourselves to offer lower-cost and efficient investment vehicles to some of our smaller Ontario managed accounts currently precluded from pooled funds.
2. It aligns the regulations in all the provinces so that our clients and our firm are treated equally in different jurisdictions.

3. It aligns the rules in Ontario between accounts managed by trust companies and investment counselors so that both can invest flexibly for our clients.

Congratulations on taking the step of putting the proposed change out for public comment. We encourage speedy implementation of this change.

Please do not hesitate to contact us if you have any questions.

Sincerely,

Robert F. Richards, CFA
President

Richard M. Tattersall, CFA
Vice-President & Compliance Officer

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THE INVESTMENT FUNDS INSTITUTE OF CANADA
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March 17, 2005

Alberta Securities Commission
British Columbia Securities Commission
Manitoba Securities Commission
New Brunswick Securities Commission
Securities Commission of Newfoundland and Labrador
Registrar of Securities, Department of Justice, Government of the Northwest Territories
Nova Scotia Securities Commission
Registrar of Securities, Legal Registries Division, Department of Justice, Government of Nunavut
Ontario Securities Commission
Prince Edward Island Securities Office
Autorité des marchés financiers
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c/o Blaine Young
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-and-

c/o Anne-Marie Beaudoin
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C.P. 246, 22e étage
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Dear Sirs/ Mesdames:

Re: IFIC's Comments on Proposed National Instrument 45-106 *Prospectus and Registration Exemptions*

We are writing to you on behalf of the Investment Funds Institute of Canada ("IFIC") and its Members to provide our comments on Proposed National Instrument 45-106 *Prospectus and Registration Exemptions* ("NI 45-106").

IFIC is the national association of the Canadian investment funds industry. IFIC's membership includes fund managers representing nearly 100% of the $517.6 billion in mutual fund assets under management in Canada[1], retail distributors of investment funds and affiliates from the legal, accounting and other professions.

We appreciate this opportunity to comment on NI 45-106. While we are supportive of the Canadian Securities Administrators' ("CSA") initiative to create a harmonized exemption regime in Canada, we do have several concerns with proposed NI 45-106, which are outlined below.

GENERAL COMMENTARY

Lack of harmonization

We commend the CSA for attempting to create a harmonized approach to registration and prospectus exemptions, and recognize that proposed NI 45-106 is a significant improvement over the exemption current regime. However, the proposal perpetuates many disparities and inconsistencies in the available exemptions. These disparities and inconsistencies result in the continued balkanization of current exemptions. We are strongly of the view that the exemptions should be harmonized among all Canadian jurisdictions.

We believe that the CSA should be satisfied with nothing less than a truly uniform exemptions rule, and not with an Instrument such as NI 45-106 that contains a patchwork of carve outs and exceptions. The Canadian investment industry, although relatively small, is quite competitive. In most cases, issuers, dealers and advisers who offer financial products cannot afford to restrict their operations to a single provincial or territorial jurisdiction. Accordingly, they must access the exempt market in multiple Canadian jurisdictions. Therefore, carve-outs and exceptions should only be permitted if a compelling case is made by a particular regulator for a different regime in their jurisdiction, based on the characteristics of the market and of investors in that jurisdiction.

If NI 45-106 is adopted as proposed, those who seek to raise capital in the exempt market will still be required to navigate different rules and implement different procedures in order to access the exempt market across Canada. We submit that these discrepancies, and the consequent inefficiencies, are not in the best interests of investors for at least two reasons. First, the costs of fragmentation are ultimately passed onto Canadian investors. Second, if issuers and distributors have to navigate different regimes to access the

[1] As at February 28, 2005 – source IFIC Member Statistics.

Canadian market, reluctance on the part of issuers to distribute their products in all Canadian jurisdictions may be created. Consequently, Canadian investors, in some jurisdictions, may be denied access to investment opportunities available in other jurisdictions. If a uniform capital raising regime existed in Canada, all investments would be more readily available across all Canadian jurisdictions. Therefore, we submit that creating an entirely uniform approach to registration and prospectus exemptions is in the best interests of the Canadian financial marketplace and Canadian investors.

Ontario only exemption rule

We commend the Ontario Securities Commission ("OSC") for its willingness to work with the other members of the CSA on establishing a uniform exemptions regime for Canada. However, we do not understand why the OSC has found it necessary to maintain its own exemption rule in OSC Rule 45-501 *Prospectus Exempt Distributions* ("OSC Rule 45-501"). We believe that the propensity for local carve-outs and exceptions must be overcome, and that all jurisdictions in Canada must work together to achieve the goal of a harmonized approach to exemptions.

OSC Rule 45-501, by its very existence, is inconsistent with the goal of a National Instrument. Exemptions affect market conditions in all Canadian jurisdictions in the same way. In our view, local carve outs, such as the Ontario only exemption rule, create enormous compliance duplications, are cost inefficient and maintain the current fragmented regime.

SPECIFIC COMMENTARY

Section 1.1 *Definitions*, definition of "accredited investor"

Ontario exemption- We commend the OSC for removing the current restriction that prohibits fully managed accounts from investing in securities of investment funds in reliance on the accredited investor exemption, and for harmonizing the exemption with the other CSA jurisdictions.

However, we do have concerns that relate to the proposal that except in Ontario, a person acting on behalf of a fully managed account who is registered or authorized to carry on business as an adviser under securities legislation of a foreign jurisdiction will be an accredited investor. In our view, the OSC's position that it "has not concluded that the registration requirements in all foreign jurisdictions are appropriate for the Ontario market"[2] is unreasonable.

Ontario currently has a registration regime that requires an adviser in Ontario who advises persons resident in Ontario to register as a fully registered adviser or as an international adviser permitted to advise a restricted class of clients. The carve-out in NI

[2] National and Ontario Prospectus and Registration Exemptions, (2004) 27 OSCB (Supp-3), at page 5.

45-106 appears to affect advisers who are acting for clients outside of Ontario with respect to purchases from Ontario-based issuers. If this is the case, we question why the OSC is concerned about the registration requirements in foreign jurisdictions of advisers who advise residents of those foreign jurisdictions. If the foreign jurisdiction determines that its requirements are sufficient for its residents, the OSC should come to the same determination.

Perhaps the OSC is concerned that advisers registered as international advisers will be able to utilize the exemption. In this case, the OSC has already determined that it is appropriate for international advisers to advise individuals on their limited list of permitted clients. Therefore, we question why these permitted clients are prohibited from taking advantage of the exemption available to advisers in respect of their fully-managed accounts.

We also seek clarification on why the OSC deems it appropriate to reject the accredited investor exemption in respect of foreign advisers who advise their foreign clients (both those outside of Canada and those in other Canadian jurisdictions), and why international advisers are also prohibited from taking advantage of the benefit of the exemption. We do not see whom the OSC is protecting by precluding foreign advisers from the category of accredited investors in Ontario when dealing with their fully managed accounts. At a minimum, we submit that advisers registered in foreign jurisdictions having registration rules similar to those in effect in Ontario should be considered to be accredited investors in Ontario.

Clause (n)- The words "in the jurisdiction" should be added after "an investment fund that distributes or has distributed its securities only to persons". No policy rationale is provided for precluding a pooled fund, which has distributed its securities in a foreign jurisdiction in compliance with the requirements of that jurisdiction, from being considered to be an accredited investor in Canada, even though all of the investors from the foreign jurisdiction may not qualify as accredited investors in Canada.

Subclause (n)(ii)- This subclause permits an investment fund that distributes, or has distributed, its securities to persons in the circumstances referred to in sections 2.10 *minimum amount investment* and 2.19 *additional investment in investment funds* to be considered to be an accredited investor. We believe that an investment fund that distributes, or has distributed, its securities to persons in the circumstances referred to in section 2.18 *investment fund reinvestment* should also be considered to be an accredited investor and added to those listed in subclause (n)(ii). There should not be a distinction made between the distribution circumstances in sections 2.10 and 2.19 and the distribution circumstances in section 2.18.

Section 1.1 *Definitions*, definition of "eligibility adviser"

We believe that the term "eligibility adviser" is an inappropriate term to describe the concept of an individual who advises eligible investors. The use of the term "eligibility

adviser" may lead to confusion, and misunderstanding since the "adviser" is not providing advice on the eligibility of investments, but rather is advising on the suitability of investments for eligible investors. We suggest that the term "eligibility consultant" is appropriate and better describes an individual who advises eligible investors.

We also question why accountants and lawyers are considered to be appropriate "eligibility advisers" in Saskatchewan and Manitoba, but not in the other Canadian jurisdictions, and what the policy reason is for this different treatment of accountants and lawyers.

Section 1.1 *Definitions*, definition of "non-redeemable investment fund"

Since reference to the term "non-redeemable investment fund" is made in several Instruments, we believe that a single definition of this term should be added to National Instrument 14-101 *Definitions* so that all references to "non-redeemable investment fund" could be harmonized in all Instruments.

Sections 2.5 *Family, friends and business associates* and 2.6 *Family, founder and control person-Ontario*

Ontario exception- We disagree with the OSC's assumption that the family, friends and business associates exemption allows exempt securities to be distributed to an "unlimited group". In fact, the exemption is limited to the group of individuals and entities that are clearly identified in section 2.5 of NI 45-106. Ontario issuers and investors should have the flexibility to rely on this exemption just as other Canadian issuers and investors can rely on it. Although we do not support differences between the jurisdictions, if Ontario is unwilling to provide for the exemption on an unqualified basis, we suggest that it could provide for a risk acknowledgment in certain circumstances, as is being proposed in Saskatchewan.

Definition of "founder"- We believe that the founder of an issuer should not be required to be "actively involved in the business of the issuer" in order to benefit from the family, friends and business associates exemption. If an individual takes the initiative in founding, organizing or substantially reorganizing the business of an issuer, this individual should be considered to have an appropriate level of in-depth knowledge about the issuer so as to warrant an exemption from the protection of the Instrument.

Subsections 2.6(2) *Family, friends and business associates* and 2.9(14) *Offering memorandum*

We believe that the requirement in subsections 2.6(2) and 2.9(14) of NI 45-106 for issuers and sellers to maintain signed risk acknowledgements for a period of eight years after a distribution or trade is unnecessarily burdensome. Given the cost of maintaining and filing these documents, we suggest that a shorter than eight year time period would be appropriate.

Section 2.9 *Offering memorandum*

The offering memorandum exemption is a significant benefit to certain corporate issuers. However, while it is possible for investment funds to utilize the offering memorandum exemption, investment funds rarely take advantage of the exemption. This is, in part, due to the fact that not all of the offering memorandum's required disclosure applies to all investments funds, such as working capital deficiency, short term objectives and how the issuer intends to achieve these objectives. Mutual funds are more diversified than other securities and as such, most mutual fund investors are exposed to lower risk than many pure corporate investors. We, therefore, believe that a specific offering memorandum exemption for investment funds is appropriate and should be designed.

In addition, we question why the OSC has prohibited the offering memorandum exemption from applying in Ontario, and seek clarification on why investors in Ontario are being treated differently than investors in the other Canadian jurisdictions.

As a housekeeping matter, we note that the text of the exemption does not mention Yukon, and, therefore, issuers and dealers in Yukon are advised on if and when they are able to rely on the offering memorandum exemption.

Subsection 2.10(1)(b) *Minimum amount investment*

We suggest that this provision should be amended to permit the required $150,000 to be paid *in specie*. We believe that if an investor has paid $150,000 *in specie*, and as long as the required amount is fully paid, it is appropriate for this investor to benefit from the minimum amount investment exemption. If there is a concern about the valuation of an *in specie* payment, delivery and settlement conditions similar to those found in section 9.4 of National Instrument 81-102 *Mutual Funds* could be included in NI 45-106.

Sections 2.18 *Investment fund reinvestment*

An investment fund reinvestment plan can either be (i) an optional plan that it is selected by the investor; or (ii) an automatic plan that is an inherent feature of a fund as disclosed in the fund's prospectus. We believe that the exemption in subsection 2.18(1) of NI 45-106 should be broadened as it appears that the exemption, as proposed, only covers the situation in which a reinvestment plan is an optional plan as selected by an investor.

Subsection 2.18(5) of NI 45-106 proposes that disclosure be required only in a fund's prospectus. However, in the interest of providing investors with more appropriate disclosure, we believe that the Instrument should take into account the option of including the required disclosure in a fund's financial statements since an investor is only required to receive a fund's prospectus when the fund is purchased, but will generally receive the financial statements each time they are filed.

Sections 2.18 *Investment fund reinvestment* and 2.19 *Additional investment in investment funds*

The proposed investment fund reinvestment and additional investment in investment funds exemptions are too restrictive and do not take into account multi-class and multi-series funds. We believe that an investor should be able to take advantage of these exemptions if the units being purchased are those of a fund that has the same portfolio assets as those attributed to the securities currently held by the investor.

We do not see a policy basis for requiring that the additional investment or reinvestment of distributions be in the same class/series, provided that the securities are tied to the same underlying portfolio. The investment fund reinvestment and additional investment in investment funds exemptions should be linked to investment in a fund with the same portfolio assets and not to a particular series or class of the fund. This linkage would provide flexibility to investors, without permitting them to reinvest or make additional investments in another investment portfolio of the same fund, for example a fund with multiple classes each representing a different portfolio of investments. It would also permit investors to switch between classes/series without being required to satisfy the minimum investment amount at the time of the switch and permit investors to direct reinvestments of distributions into a different series/class of the same fund.

Section 2.44 *Removal of exemptions- market intermediaries*

We question the connection between subsection 2.44(1) of NI 45-106 and section 3.2 of Companion Policy 45-106CP. Subsection 2.44(1) lists the exemptions that are unavailable in Ontario to market intermediaries. However, section 3.2 of Companion Policy 45-106CP states that the exemptions listed in subsection 2.44(1) are unavailable to market intermediaries in Newfoundland and Labrador, as well as Ontario.

Since both Ontario and Newfoundland and Labrador have universal registration regimes, we request clarification on whether market intermediaries in Newfoundland and Labrador are subject to the exemptions listed in subsection 2.44(1) in the same way that market intermediaries in Ontario are subject to these exemptions.

Related registration issues

Limited market dealers- Since the stated goal of proposed NI 45-106 is to harmonize the registration exemptions in Canada, we question why Ontario and Newfoundland and Labrador are maintaining the "Limited Market Dealer" registration category. This registration category maintains a universal registration regime only in these two jurisdictions, which preserves the current fragmented registration and exemption regime in Canada. We believe that it is appropriate for Ontario and Newfoundland and Labrador to revisit whether universal registration is appropriate.

The sale of pooled funds and other exempt products- The current regime, where mutual fund dealers in some jurisdictions can sell pooled funds (including hedge funds) and other exempt products, GICs and other financial instruments while they cannot sell such products in other jurisdictions, is unreasonable. It is vital that the CSA recognize that consistency across Canada on this issue is important. Many mutual fund dealer firms conduct their business in many, if not all, Canadian jurisdictions. It is imperative that a uniform Canadian standard be established regarding what mutual fund dealers can and cannot sell. We understand that the CSA is currently developing a registration Instrument, and we strongly urge that these issues be addressed by the CSA.

Capital accumulation plan exemption

We believe that the Capital Accumulation Plan (CAP) exemption in CSA Notice 81-405 *Proposed Exemptions for Certain Capital Accumulation Plans* should be integrated into NI 45-106. It would be extremely efficient to consolidate all exemptions into a single harmonized National Instrument.

Note that while we are generally supportive of the CAP proposal and its intended harmonization of the treatment of mutual funds as investments within CAPs, we are of the view that certain aspects of the exemption do not appear to take into account some practical situations, which can occur with respect to CAP members. In addition, we have some concerns about the degree to which the proposal meets the harmonization goal stated by the CSA.

For a thorough explanation of our comments on the proposed CAP exemption, including our comments on the form of the exemption, the harmonized treatment of mutual funds and segregated funds in the exemption, how CAPs deal with former employees and their spouses and the exemption's filing requirements, please consult IFIC's *CSA Notice 81-405 Proposed Exemptions for Certain Capital Accumulation Plans* submission to the CSA dated July 30, 2004.

CLOSING REMARKS

We would like to reiterate our support for the goal of achieving a harmonized exemptions rule in Canada. However, as noted, we believe that proposed NI 45-106 does not achieve this goal. Perpetuating a system where the securities regulatory authority in a jurisdiction can formulate exceptions or carve-outs when its does not agree with the other CSA members, absent demonstrable unique circumstances in their particular province or territory, does not result in harmonization and consolidation.

We strongly believe that all jurisdictions in Canada must work together to achieve the significant goal of harmonization. This means that all jurisdictions must be prepared to make some compromises so that genuine harmonization and uniformity can be achieved.

* * *

We look forward to the opportunity to discuss these matters with you. Please contact the undersigned directly by email at jmurray@ific.ca or by telephone at (416) 363-2150 Ext. 225; or Stacey Shein, Legal Counsel, by email at sshein@ific.ca or by telephone at (416)363-2150 x238, should you require further information or wish to discuss our comments.

Yours truly,

THE INVESTMENT FUNDS INSTITUTE OF CANADA

By: "Original signed by John W. Murray"

John W. Murray
Vice President, Regulation & Corporate Affairs

McDougall Gauley
barristers & solicitors

Memorandum

To: Dean Murrison, Deputy Director Legal/Registration

From: Bill Nickel

Re: Comments on proposed National Instrument 45-106 *Prospectus and Registration Exemptions*

Date: 21 March 2005

I just wanted to thank you for the opportunity to comment on proposed NI 45-106. I believe that harmonization of the various registration and prospectus exemptions is important and I'd also like to thank the CSA for their efforts in this regard.

Rather than extolling of the virtues of the benefits of NI 45-106, I've confined my following comments to those areas where I had a question, concern, or suggestion regarding the exemptions contain in NI 45-106:

General Questions/Concerns pertaining to Saskatchewan only:

Is the SFSC proposed local instrument 11-502 *Removal of Statutory Exemptions* available for comment yet? I would be interested in seeing how this local instrument will be structured. Schedule 8 to the Consequential Changes Arising from Proposed NI 45-106 doesn't seem to shed much light on what is being proposed. How can the SFSC simply say that the exemptions in Section 38, 39, 39.1, 81 and 82 of the Act "are removed"? It seems to me that there are too many other instruments (such as MI 45-102 *Resale Rules*) that make reference to trades based on the exemptions granted under these sections to simply repeal them from the Act. I think it may also be too overbroad to simply say that all exemptions under such sections no longer exist. There may well be statutory exemptions under the Act and Regulations that should remain, regardless of the adoption of NI 45-106, in order to address particular situations that are possibly unique to our Province and to help promote raising of capital within our Province. We should not be seen to be doing away with all of our statutory exemptions just because we want to promote harmonization.

I was a little concerned that under the column entitled Comments/Change to the Saskatchewan Table of Concordance that a number of exemptions were to simply be eliminated following the adoption of NI 45-106. I suggest that there should be industry consultation within the Province before certain of these exemptions are eliminated, such

as the financial institution exemption and the promoters exemption. In specifically looking at the promoter exemption, I don't think it's fair to say in the Comments/Change column that the loss of this exemption in favour or the accredited (Part 2.4) and close friends (Part 2.5) exemption represents no change. Reliance on either the accredited or close friends exemption under NI 45-106 requires the filing of a Report on Exempt Distribution. I believe this is a significant change (and administrative cost) over what was previously required under the promoters exemption under the Act.

Is Saskatchewan General Ruling/Order 45-912 *Exemptions for Co-operatives and Credit Unions* available for review and/or comment? I think it's particularly important for the Credit Union and Co-operative systems to know what the content of that GRO is in order to determine what the impact will be on them respecting the proposed elimination of the financial institution exemptions currently available to them under the Act.

Respecting the close personal friend and close personal business associate exemption, will a modified form of Staff Notice 45-701 remain in effect to permit pre-clearance of any questionable relationships, or has Staff Notice 45-701 been rescinded with the change in the review policy that occurred when MI 45-103 was adopted in Saskatchewan?

Comments on proposed NI 45-106:

- Definition of "eligibility advisor". While I appreciate and agree that, due to our sparse population and limited resources, it is appropriate to include lawyers and accountants as eligible advisors in Saskatchewan and Manitoba, I have a concern with respect to the qualifications in that such qualifications seem so broad as to create uncertainty. How can a lawyer or accountant know, without performing a lot of time consuming background checks and investigations, if the person they have been retained by has ever acted for or been retained by the issuer, or its directors or officers? This would seem to create a disproportionate amount of effort in order to avoid the potential harm. The real concern, I believe, is that the lawyer or accountant has either a direct or indirect relationship with the issuer, so why not just say that. It should also be remembered that both lawyers and accountants are licensed and subject to disciplinary proceedings by self regulatory organizations, much the same as IDA members. It seems counterproductive to me that an IDA member should be entitled to have an indirect interest in an issuer and yet the lawyer or accountant shouldn't. So long as the lawyer or accountant isn't paid directly or indirectly by the issuer for providing such investment advice (so that there can be no question as to who the client is) it would seem to me that the code of professional conduct applicable to both the lawyer and accountant would require them to represent their client (the potential investor) to the best of their ability. I know this definition is a carry forward from MI 45-103, but perhaps this is an opportunity to make this concession for Saskatchewan and Manitoba more useful.

- Definition of "private issuer". Given the restrictions on who may invest in a private issuer [see Item 2.4(1) of NI 45-106], it seems unnecessary to me that the regulators seek to pierce the corporate veil and require an issuer to include in its calculation of the 50 shareholder cap those shareholders, beneficiaries or partners of a company, trust or partnership established to facilitate the investment by those persons in the issuer. If the directors or beneficial owners of such an entity have, by majority decision, decided to invest in the securities of a private issuer then the regulators should not question that decision. Nor should the regulators be seen to be imposing restrictions on how an issuer chooses to structure themselves. I'd suggest that the definition of "private issuer" revert to the definition currently found under MI 45-103.

- Part 2.9(13) – amendments to the Offering Memorandum – Having now had the opportunity to conduct a few exempt offerings in reliance on the Offering Memorandum exemption of Part 4 of MI 45-103, I'd like the regulators to consider revising Part 2.9(13) of NI 45-106. I suggest that Part 2.9(13) of NI 45-106 (which is based on Part 4.4(4) of MI 45-103) is unnecessarily cumbersome. Part 4.4(4) of MI 45-103 (as would Part 2.9(13) of NI 45-106) requires that an issuer have the subscription agreements re-signed each time there is an update or amendment to the Offering Memorandum. While it is important that investors receive this updated information, the requirement to have each subscriber re-sign their subscription agreement has, in my experience, generated a lot of negative feedback. Most notably, subscribers do not wish to spend their time re-signing the subscription agreement and believe that to do so is an unnecessary intrusion. This not only negatively affects the goodwill of the issuer, but also casts the regulators (who are blamed for this intrusion) in a less than favourable light. As with prospectus offerings, I suggest that the better alternative is to simply require the issuer to send a copy of the amendment to subscribers and confirm that subscribers have a 2 day right of rescission. It should be up to the subscriber to decide whether or not to exercise that right of rescission. It should not be necessary for the issuer to follow-up with each subscriber to obtain a new or re-signed subscription agreement. The requirement that each subscriber re-sign their subscription agreement does not add anything to the protection of such subscriber and makes the use of this exemption administratively cumbersome.

- Part 2.9(11) – Offering Memorandum exemption and the certificate page to Forms 45-106F3 and F4. Should the requirement that the certificate page be signed by a "promoter" be changed to "founder" (as such term is defined in NI 45-106)? I'd suggest that it is not necessary to have a promoter who is not also a founder (i.e. still actively engaged in the business) sign the certificate and accordingly I'd suggest changing the reference from "promoter" to "founder". Just because a person has a 10% interest in an issuer doesn't necessarily mean that such person has any more knowledge about the issuer if such person is not also actively engaged in the issuer's business.

- Part 2.11(1) – Business Combination and reorganization – The requirement to issue a disclosure document to security holders presents an unreasonable requirement on private issuers and small issuers that do not qualify as a private issuer. I acknowledge

that this requirement exists in BC (see sections 45(2)(9)(ii) and 74(2)(8)(ii) of their Act), but it has not previously existed in Alberta (see sections 86(1)(m)(ii) and 131(1)(f)(ii)), Saskatchewan (Sections 39(1)(m)(ii) and 81(1)(f)(ii)), Manitoba (sections 19(1)(h.3) and 58(1)(b)) and Ontario (sections 35(1)(12) and 72(1)(f)(ii)). I didn't have time to check the remaining provinces and territories.

Under corporate law, any fundamental change in the structure of an issuer may trigger the requirement for shareholder approval. However, there are circumstances where such shareholder approval is not needed (such as the spin out of a subsidiary or assets to a new company where those assets do not constitute all or substantially all of the assets of the issuer). In those circumstances it is unreasonable for the CSA to insist that shareholder approval be obtained when no such approval is required under corporate law. Further it is unreasonable for the CSA to insist that an information circular in the prescribed form must be used in all circumstances (even if shareholder approval is needed under corporate legislation). It should be remembered that, under corporate law, only companies who have more than 15 shareholders need to do a mandatory proxy circulation. Companies with fewer than 15 shareholders do not need to do a mandatory proxy solicitation and therefore do not need to issue an information circular. Moreover, small companies (even some closely held companies with more than 15 shareholders) will often meet the shareholder approval requirement through a written consent resolution in lieu of a shareholders meeting as is permitted under corporate law. Inclusion of this mandatory disclosure/shareholder approval requirement is unduly restrictive and may well, due to the disproportionate cost of compliance, preclude small companies (who are more apt to use this exemption) from being able to use it. Note that the private issuer exemption doesn't apply in these circumstances as no securities are actually being purchased in a reorganization. Typically a reorganization involves a share exchange without further consideration having to be paid.

A further problem with Item 2.11(1)(b)(ii) is that it seems to imply that unanimous shareholder approval is required, which is contrary to corporate law where approval by special resolution is all that is needed. Further, it is not clear whether all shareholders are entitled to vote in respect of such approval. Under corporate legislation, the resolution respecting a reorganization is only required to be put to those shareholders who are entitled to vote on such resolution. In the case of non-voting shares, if the rights of the holders of non-voting shares are not being affected by a proposed reorganization, such shareholder is not entitled to vote on the resolution to approve such reorganization.

I strongly urge the regulators to reconsider Part 2.11(1). I submit that BC has got it wrong (in that they have made this exemption too restrictive), and that the broader exemption as currently found in AB, MB, SK, and ON is the preferred form of the exemption. The regulators should not be seen to be imposing a requirement that shareholder approval is need in all cases where a reorganization is contemplated, when no such requirement for shareholder approval exists under applicable corporate legislation. If the regulators make this exemption too restrictive I submit that they will

be inadvertently forcing small issuers to seek discretionary relief from the requirement to circulate mandatory information circulars and obtain shareholder approval.

- Part 2.30 – Incorporators exemption – If this exemption is to be limited to 5 persons, then I don't see it as being useful. However, if the regulators were to remove the cap of five investors this exemption could be much more useful. There seems to be no particular reason for limiting this exemption to 5 persons. Sometimes, such as in community based projects, there are many more than 5 incorporators or organizers who only pay nominal consideration for their shares (additional capital is raised under alternate exemptions – and often in these cases from persons who may or may not be the same as the incorporators or organizers). Previously, these investors may have qualified under the promoters exemption (for which there were no filing requirements), but I understand that this exemption is to be lost in favour of the accredited investor or close friends exemption (both of which have filing requirements). If the promoters exemption is to be made unavailable to issuers, then I'd suggest the retention of the incorporators exemption but only if the cap on 5 investors is removed.

- Part 2.42 – Schedule III Banks and Cooperative Associations – with the possible removal of the financial institutions exemption currently available under applicable securities laws, I'd like to suggest that the registration exemption and prospectus exemption for trades in evidences of deposit under NI 45-106 should be expanded to apply to all Canadian financial institutions and Schedule III banks, as such terms are defined in NI 45-106.

Comments on proposed Form NI45-106F1 *Report of Exempt Distribution*:

This form seems to build on the information previously required by Form 45-103F4. I am concerned that the CSA appears to be requesting/amassing information that is unnecessary, and not without administrative cost to the issuers who wish to use such exemptions.

In particular, I'm concerned that:

- Item 2: For exempt trades, it should not be relevant whether the issuer is a reporting issuer and if so the jurisdictions where they are a reporting issuer. The only reason for such a request would be to amass statistical information which I suggest is outside the mandate of the securities regulatory authorities, and the risk of such information being used for an improper or undisclosed purpose is too great. I'd suggest that Item 2 should be deleted from Form 45-106F1.

- Item 3: I see no reason why the CSA should be requesting the issuer to identify what industry they are engaged in. The only reason for such a request would be to amass statistical information which I suggest is outside the mandate of the securities regulatory authorities, and the risk of such information being used for an improper or

undisclosed purpose is too great. I'd suggest that Item 3 should be deleted from Form 45-106F1.

- Item 4 and Schedule I: I do not think it is appropriate for regulatory authorities to be seeking the name, address and telephone number of investors. The only reason regulators would want the telephone number of an investor is so that a commission could perform a spot audit to determine if the issuer was entitled to rely on the particular exemption claimed. In the absence of a complaint, I suggest that it is unreasonable for a commission to believe that it should substitute its belief as to whether or not there is a sufficient nexus or basis for justifying a particular trade based on an exemption in place of the determination of the issuer and investor. As highlighted in Item 1.9 of Companion Policy 45-106CP, it is the issuer that is responsible for determining if a particular exemption is available in the circumstances. Further, the issuer has certified in Form 45-106F1 that the information is accurate, and it is the issuer that would be liable if that certification ultimately proved to be incorrect. In the absence of a complaint, I suggest that it is procedurally unfair for a regulator, in its capacity as an investigatory body, to contact an unrepresented investor (who may not appreciate the technical requirements that need to be met in order to justify reliance on a particular exemption) to elicit information about an issuer and/or particular trade. Further, this fails to take into account the personal privacy of the investor. What if the investor doesn't want to be contacted by a commission or doesn't want their telephone number disclosed? Please note that an unlisted phone number of an individual is personal information for the purposes of the *Personal Information Protection and Electronic Documents Act* (Canada), and the regulators should be aware of the provisions of section 7(3)(c.1) of PIPEDA that requires the regulators to disclose their lawful authority for making such request. I've read Part 5.1 of Companion Policy 45-106CP respecting the expression of intent that the regulators will not disclose the information on Schedule I to the public, but I don't believe this assists an issuer with its obligations under PIPEDA regarding the collection or retention of such information. Further, in the event an individual makes a request under PIPEDA that a regulator provide such individual with a copy or summary of any information in the regulators records pertaining to such individual, are the regulators prepared to comply with such request? For all of the forgoing reasons I'd suggest that the inclusion of the requirement to obtain and disclose the telephone number of investors be removed from Schedule I.

- Item 8: If this information is necessary in order to qualify an exempt trade, I suggest that it should be made clear that the "exemption being relied on" is the exemption for payment of the commission, not the exemption on which the underlying security was traded in reliance on. I've seen too many issuers, both represented and unrepresented, that don't appreciate the distinction and simply insert the exemption relied on for the underlying trade. Further, in the case of brokers (registered dealers) acting as sales agents, I'd suggest the inclusion of a note in the instructions clarifying that only the lead sales agent (broker) need be identified and not each sub agent. Further, I think it should be made clear in the instructions that, in the case of brokers acting as sales

agents, the issuer does not need to identify each investment advisor who facilitated sales on behalf of the broker.

Comments on proposed Form NI45-106F5 Saskatchewan Risk Acknowledgement:

It seems unnecessary that Saskatchewan should be the only jurisdiction to require a separate risk acknowledgement for trades in reliance on the close friends or business associates exemption.

OGILVY
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125 1879 - 2004

Toronto, March 16, 2005

VIA E-MAIL

Mr. Blaine Young
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Alberta Securities Commission
400 – 300 – 5th Avenue S.W.
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- and to -

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Dear Sir and Madam:

RE: Request for Comments – Proposed National Instrument 45-106, Related Forms and Companion Policy – *Prospectus and Registration Exemptions*

This comment letter has been prepared in response to the request for comments on Proposed National Instrument 45-106, its related forms and Companion Policy 45-106CP – *Prospectus and Registration Exemptions* (the "Proposed National Instrument").

We strongly support the harmonization of prospectus and registration exemptions throughout Canada which will simplify the raising of capital and allow investors in all provinces of Canada, with limited exceptions, equal opportunity to participate in private placement transactions. We do, however, have a few specific comments on the Proposed National Instrument.

1. **Underwriter Exemption** – Section 1.5 of the Proposed National Instrument effectively removes the use of the accredited investor exemption and all other exemptions other than the underwriter exemption for an underwriter "acting as underwriter". We are of the view that given the broad definition of the term "underwriter" contained in the *Securities Act* (Ontario), this limitation is unnecessarily restrictive. It is unclear why such a restriction is deemed necessary – for instance, why should, as a matter of policy, an underwriter be denied the accredited investor exemption if the underwriter is prepared to comply with the conditions of such exemption, such as the payment of fees?

2. **Private Issuer Exemption** – We support the inclusion of the private issuer exemption and the proposed removal of the closely-held issuer exemption. We would, however, suggest that the Proposed National Instrument be amended to remove the requirement that a private issuer have restrictions on the transfer of its securities contained in its constating documents or a security holders' agreements. While this restriction is common in domestic Canadian companies, and most Canadian private issuers will likely include such a provision in their articles, many foreign private companies do not have similar restrictions on transfer contained in their constating documents as such transfer restrictions may not be necessary in their domicile. Foreign issuers may be required to include such a provision which is unusual for their jurisdiction of incorporation for the sole purpose of meeting the requirements of Canadian securities laws. To recognize the global nature of capital raising and to facilitate private placements by foreign issuers, we would suggest that this requirement be deleted or restricted to Canadian issuers.

   We would also propose that in determining whether there are 50 shareholders or less of the issuer, the reference should be to registered rather than beneficial ownership. Determining beneficial ownership, especially in the case of a sale by a shareholder as opposed to a treasury issue, may be difficult. The definition of private company contained in the *Securities Act* (Ontario) allows determination of the number of shareholders by reference to registered ownership.

   In subsection 2.4(1), we would suggest that the definition of family members in subsections (b), (c) and (f) be expanded to include in-laws. We note that this was the approach taken by the CSA in drafting the definition of immediate family member contained in Multilateral Instrument 52-110 – *Audit Committees*.

3. **Minimum Amount Investment** – Subsection 2.10 re-introduces an exemption for a minimum exemption of $150,000 in Ontario. We note, however, that the new exemption is less flexible in that it requires the purchase price to be payable in cash. The prior provision allowed securities to be issued for a *bona fide* future obligation, for example a promissory note. We would recommend that flexibility be retained in the new re-introduced exemption.

4. **Restrictions on use of Accredited Investor, Private Issuer and Minimum Investment Amount Exemptions** – Subsection 2.3(6) provides that the accredited investor exemption is not available if the "accredited investor" is "created" or "used primarily" to purchase securities under this exemption. Similar wording is used in the definition of private issuer and the minimum investment amount definition. We are concerned that this wording is extremely broad and has the potential to create uncertainty for investment vehicles seeking to rely on such exemptions in the further. Such wording is not currently contained in the accredited investor exemption or in the definition of private issuer. Clearer language needs to be adopted or guidance provided in the Companion Policy as to the intent of this language. We would suggest that the condition be deleted, or in the alternative, be replaced with a condition which states that the exemptions are not available in respect of a person "created solely for the purpose of becoming eligible to purchase securities in reliance on an exemption...".

5. **Friends, Family and Business Associates** – We are of the view that the exemptions in section 2.5 (*Family, friends and business associates*) and 2.7 (*Family, founder and control person – Ontario*) should be reconciled to provide harmonization of the exemption.

****

This letter has been prepared by the securities law group of our Toronto office but does not necessarily reflect the views of all of its partners. If you have any questions concerning these comments, please contact Tracey Kernahan directly at (416) 216-2045 or by e-mail at tkernahan@ogilvyrenault.com or by fax at (416) 216-3930.

Yours very truly,

Ogilvy Renault LLP

TK/scw

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OSIFA
Ontario Strategic Infrastructure Financing Authority

March 16, 2005

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RE: Proposed National Instrument 45-106

Dear Mr. Young:

Thank you for the opportunity to comment on Proposed National Instrument 45-106. We would like to comment on s. 2.35(2) in particular. In reviewing that section of the Proposed National Instrument, we have noted that corporations incorporated under the *Education Act* (Ontario) for the purpose of providing financing for school boards are granted exempt status as are municipal corporations. We would like to respectfully suggest that OSIFA be added to this category.

OSIFA is an Ontario Crown Corporation and Crown Agent incorporated pursuant to the *Ontario Strategic Infrastructure Financing Authority Act, 2002* (the "OSIFA Act"). It is exempt from prospectus and registration requirements in Ontario pursuant to O. Reg. 106/03.

OSIFA was created for the purpose of providing financing for Ontario municipalities and other Ontario public bodies (to be specified by regulation) by way of issuing bonds, debentures and other evidences of indebtedness to the public as well as through other sources of funding such as contributions of equity or subordinated loans from the Province of Ontario and lending the proceeds thereof to such entities. At the present time, OSIFA's mandate is solely to provide financing to municipalities and no other public bodies have been specified by regulation.

OSIFA was initially funded in 2003 through a $1 billion 50 year subordinated loan from the Province of Ontario and a $120 million 20 year subordinated loan from the Ontario Clean Water Agency ("OCWA"). This $1.12 billion is held as a debt service reserve fund by OSIFA.

OSIFA has received credit ratings of AA+ from Standard & Poor's, AA from Dominion Bond Rating Service and Aa2 from Moody's Investors Service; ratings equal to (and in the case of Standard & Poor's superior to) the credit ratings of the Province of Ontario.

Pursuant to the OSIFA Act, OSIFA is required to submit an annual report and audited financial statements each year to the Ontario Minister of Finance and it is audited each year by the Provincial Auditor.

Pursuant to section 18 of the OSIFA Act, as security for the payment by a municipality or other public body of amounts borrowed from OSIFA, such entity may agree in writing with OSIFA that the Ontario Minister of Finance is entitled to deduct from money appropriated for payment to such entity amounts not exceeding the amounts that the municipality fails to pay to OSIFA and to pay such deducted amounts to OSIFA. This is a mandatory provision in all OSIFA loan agreements and debentures purchased from municipalities by OSIFA.

OSIFA acts as a financing vehicle for municipalities and other public bodies by offering for sale Infrastructure Renewal Bonds and potentially other evidences of indebtedness, the proceeds of which will be lent by OSIFA to participating municipalities and other public bodies to fund capital infrastructure projects such as water works, sewer works, roads and bridges. OSIFA does not expect that loans to public bodies other than municipalities will exceed 20% of its total loan portfolio at any given time.

A municipality or other public body that receives financing from OSIFA will issue a debenture to, or enter into a loan agreement with, OSIFA pursuant to which it will agree to repay the monies borrowed from OSIFA. The loans will be funded by OSIFA through the sale of Infrastructure Renewal Bonds and possibly other evidences of indebtedness. The loans will be direct, unsecured obligations of the municipality or other public body, ranking *pari passu* with all other unsecured indebtedness of such entity. Each municipality or other public body will remain severally liable for its own loans and will incur no liability for the loans of any other participating entity except with respect to regional municipalities as permitted pursuant to the *Municipal Act, 2001.*

OSIFA will publish on its website, and make available in hard copy upon request, its annual audited financial statements, consistent with the continuous financial disclosure of Ontario municipalities.

OSIFA's objective is to promote healthy and prosperous communities in Ontario by providing municipalities and other public bodies with efficient and affordable

financing for investing in capital infrastructure. By financing through OSIFA and its Infrastructure Renewal Bond structure, municipalities and other public bodies pool their financing requirements, thus facilitating access to the bond market, which might not otherwise be available to entities with small financing needs, and also reduce entry costs into the bond market and financing costs generally to the participating entities. The size and diversification of the pooled debt represented by the loan portfolio creates economies of scale which result in reduced financing costs and expanded access to the capital markets for all municipalities and other public bodies. The pooling of debt underlying the offering of Infrastructure Renewal Bonds will reduce the need for municipalities and other public bodies to devote resources and expertise to financing activities.

Pursuant to sections 41 and 42 of the *Securities Act* (Ontario), no prospectus is required for the distribution of a debt security issued or guaranteed by a municipality, a metropolitan corporation or a school board provided the entity in question has the power to levy a tax on landed property located in a Canadian province.

Pursuant to the equivalent legislation in jurisdictions other than Quebec, no prospectus is required for a trade of bonds, debentures or other evidences of indebtedness of any municipal corporation in Canada including debentures issued for public, separate or secondary school purposes or guaranteed by any municipal corporation in Canada or secured by or payable out of rates or taxes levied under the law of any province or territory of Canada on property in such province or territory and collectable by or through the municipality in which such property is situated.

Based on the following, we respectfully submit that OSIFA is a reasonable proxy for a municipal issuer, is substantially similar to a corporation created under s. 248(1) of the Education Act and its inclusion in s. 2.35(2) is appropriate:

(a) OSIFA is a special purpose entity created by the Province of Ontario for the purpose of providing municipalities and other public bodies in Ontario with efficient access to the debt capital markets to fund capital infrastructure through the sale of bonds, debentures and other evidences of indebtedness.

(b) OSIFA's assets consist primarily of the loans to municipalities and its debt service fund and its liabilities relate solely to bonds, debentures and other evidences of indebtedness incurred for the purpose of providing the loans to municipalities, debt obligations to the Province of Ontario and OCWA that are subordinated to the evidences of indebtedness issued to the public and general corporate and administrative expenses.

(c) Currently, 100% of OSIFA's loan portfolio consists of loans to municipalities. On a going forward basis, at least 80% of OSIFA's

loan portfolio will continue to consist of loans to municipalities. The risk profile for bonds, debentures and other evidences of indebtedness of OSIFA is substantially similar to that of debt securities issued or guaranteed by municipalities but with the benefit of diversification across the loan portfolio.

(d) Pursuant to s. 18 of the OSIFA Act, debentures issued by a municipality or other public body to OSIFA (or loan agreements entered into with OSIFA) provide for amounts payable by the Province of Ontario to the participating entity to be paid instead to OSIFA in circumstances where the participating entity is in default under its payment obligations to OSIFA.

(e) OSIFA has and expects to maintain a rating from Rating Agencies that will be comparable or superior to that of most municipalities.

(f) OSIFA's loans are provided on a full cost pass through basis.

(g) S. 248(1) of the *Education Act* (Ontario) provides that the Province may create a corporation to lend funds to school boards. A corporation created under this section is included in s. 2.35(2) of the Proposed National Instrument. OSIFA is a corporation that has been created by the Province to lend funds to municipalities. It should be listed in the same manner as the s. 248(1) corporation.

We would be happy to provide you with any further details on the operations and mandate of OSIFA.

Thank you for your consideration of our request.

Yours truly,

Dermot P. Muir
General Counsel and Corporate Secretary
Ontario Strategic Infrastructure Financing Authority

CC: Bill Ralph
Chief Executive Officer, OSIFA

Gregg Smyth
Chief Financial Officer, OSIFA

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OSLER

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Calgary
New York

March 18, 2005

Alberta Securities Commission
British Columbia Securities Commission
Manitoba Securities Commission
New Brunswick Securities Commission
Securities Commission of Newfoundland and Labrador
Registrar of Securities, Department of Justice,
Government of the Northwest Territories
Nova Scotia Securities Commission
Registrar of Securities, Legal Registries Division,
Department of Justice, Government of Nunavut
Ontario Securities Commission
Office of the Attorney General, Prince Edward Island
Autorité des marchés financiers du Québec
Saskatchewan Financial Services Commission
Registrar of Securities, Government of Yukon

Attention: Blaine Young
Senior Legal Counsel
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Calgary, Alberta T2P 3C4
e-mail: blaine.young@seccom.ab.ca

And Anne-marie Beaudoin
Directrice du Secrétariat
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Dear Sirs/Mesdames:

National Instrument 45-106 "Prospectus and Registration Exemptions" ("NI 45-106") and Ontario Securities Commission Rule 45-501 "Ontario Prospectus and Registration Exemptions" ("OSC Rule 45-501")

We are pleased to provide the Canadian Securities Administrators ("CSA") and the Ontario Securities Commission ("OSC") with our comments on the above noted National Instrument and OSC Rule.

While we are generally pleased to see a consolidated version of the prospectus and registration exemptions applicable across the country, we strongly urge the CSA not to view the publication of these Instruments as the culmination of its regulatory agenda in respect of registration and prospectus exemptions. We strongly support finalizing this project by moving to one single, harmonized regime for registration and prospectus exemptions across the country. Until such time, there will continue to be traps for the unwary who seek to access the private placement regime in Canada. By way of example, in the definition of accredited investor, paragraph n, in NI 45-106, an investment fund that has distributed its securities only to accredited investors or in minimum amounts, is included in the definition. However, in Ontario, OSC Rule 45-501 is continuing the exemption for trades by mutual funds to corporate-sponsored plans. There is thus broader leeway for investment funds in Ontario than is obvious from the definition of accredited investor in NI 45-106.

NI 45-106

Section 1.1 – Definition of "accredited investor" – clause (q) and Ontario exception

Except in Ontario, a person acting on behalf of a fully managed account who is registered or authorized to carry on business as an adviser under securities legislation of a foreign jurisdiction will be an accredited investor. We do not understand the policy rationale behind the OSC's position that it "has not concluded that the registration requirements in all foreign jurisdictions are appropriate for the Ontario market". The OSC has already determined that it is appropriate for international advisers to advise a restricted list of permitted clients. Accordingly, it is then inconsistent for the OSC to determine that these permitted clients are prohibited from taking advantage of an exemption for international advisers in respect of their fully managed accounts. If the OSC is concerned with advisers domiciled in particular jurisdictions, the definition, as applicable in Ontario, could include advisers registered in particular jurisdictions such as the United States and the United Kingdom.

Section 2.17 – Trades under a take-over bid or issuer bid

We suggest that section 2.17 be expanded to also include the trades currently covered by section 72(1)(j) in addition to covering the trades currently set forth in subsection 72(1)(k) of the *Securities Act* (Ontario) (the "Act").

Section 2.18 – Investment fund reinvestment and Section 2.19 – Additional investment in investment funds

The proposed exemptions for investment fund reinvestment and additional investment in investment funds are too restrictive and do not take into account multi-class and multi-series funds. We do not understand the CSA's policy rationale for requiring that the

additional investment or reinvestment of distributions be in the same class or series of an investment fund. We believe that an investor should be able to take advantage of these exemptions if the units being purchased are those of an investment fund that has the same portfolio assets as those attributed to securities currently held by the investor. This would provide flexibility to investors, without permitting them to reinvest or make additional investments in another investment portfolio of the same fund, for example a fund with multiple classes each representing a different portfolio of investments. It would permit investors to switch between classes or series without having to satisfy the minimum investment amount at the time of the switch and permit them to direct that reinvestments of distributions be directed into a different class or series of the same fund.

Section 2.4 – Private Issuer Exemption

Proposed NI 45-106 will re-introduce the private issuer exemption into Ontario and remove the existing closely held issuer exemption. A major criticism of the previous private company exemption was that it was very difficult to determine who was (and who was not) a member of the "public". We believe that the specified list of "non-public" purchasers under the proposed private issuer exemption will be very helpful in eliminating this uncertainty. Although there may still be occasions where it will be necessary to determine whether or not a purchaser is a member of the public under paragraph 2.4(1)(k), we suspect that most purchasers under this exemption will fall into one of the specified paragraphs 2.4(1)(a) through (j) of the Proposed Rule. This will facilitate certainty.

We note that the definition of "private issuer" is restricted to issuers who, *inter alia*, have distributed securities "only to persons described in section 2.4(1)". While this category of persons is broad and helpfully includes accredited investors, it does not include purchasers who have previously purchased under the existing closely held issuer exemption in Ontario. There will be many Ontario issuers who have used the (soon to be revoked) closely held issuer exemption and issued securities to purchasers who do not fit into paragraphs (a) through (j) of subsection 2.4(1) and who are arguably "members of the public". These issuers will be, by definition, excluded from relying on the private issuer exemption going forward and they will no longer be able to use the closely held issuer exemption. We suggest that an additional paragraph should be added to subsection 2.4(1) to include purchasers who have previously purchased under the closely held issuer exemption. Alternatively, the definition of private issuer should be amended to include issuers who have distributed securities "only to persons described in section 2.4(1) or to purchasers under the previous closely held issuer exemption". This would allow such issuers to continue to use the private issuer exemption (which is notionally replacing the closely held issuer exemption) without having to determine whether the purchasers under the previous closely held issuer exemption were (or were not) members of the public.

Section 2.34 – Underwriter Exemption

We note that underwriters will not be entitled to purchase securities as underwriters pursuant to a prospectus exemption except under section 2.34. Accordingly, the resale of such securities must be made pursuant to a prospectus or another exemption. There should be no reason why underwriters can only resell securities through a prospectus or another exemption rather than take down any unsold securities as principal and then reselling them under Multilateral Instrument 45-102 once the 4-month restricted period has expired. We submit that there is no harm to the marketplace and no abuse of the resale provisions as long as the underwriters are required to hold as principal for the 4-month period and the other requirements of Multilateral Instrument 45-102 are met. Once the underwriter determines that the distribution has been completed and takes down the securities as principal, the underwriter should be in no worse a position than any other accredited investor who purchases as principal.

Form 45-106F1

The proposed Form 45-106F1 requires more information than the existing form 45-501F1 in that it requires disclosure of purchasers in all foreign jurisdictions, in addition to the local jurisdiction. We expect that this requirement will be unwieldy and impractical, particularly where the Canadian private placement is a component of a public offering in the United States or elsewhere, and may also deter some foreign investors who will not want these details filed with a Canadian securities regulator. The practice in Ontario has been to file the Form 45-501F1 with a list of Ontario resident purchasers only. Purchasers in other Canadian provinces are disclosed in the equivalent forms filed in such provinces. There is no current requirement in Ontario to disclose the identity, let alone the address and phone number, of non-Canadian purchasers (unless such purchasers become insiders or file section 101 reports). While it may be reasonable to require disclosure of these details for Canadian purchasers, we submit that there is no need for issuers to file these details for non-Canadian purchasers.

OSC Rule 45-501

As a general matter, we strongly urge the OSC to work towards uniformity on a national level by eliminating the universal registration requirements found only in Ontario and Newfoundland.

Additionally, we strongly urge the OSC to eliminate the exceptions the OSC is including in the definition of "accredited investor" so that there is a common definition of "accredited investor" across the country. This is one of, if not the, most important private placement exemptions in the country and we do not believe there is any strong policy justification for continuing local exceptions to this definition.

Section 3.2 – Trades in mutual fund securities to corporate sponsored plans

We appreciate that the OSC has proposed the inclusion in Section 3.2 of OSC Rule 45-501 of the prospectus exemptions for trades in mutual fund securities to corporate sponsored plans and the related registration exemptions in Sections 4.1(d) and (e) of OSC Rule 45-501. These exemptions are currently found in OSC Rule 32-503. The exemptions are widely utilized for the issuance of securities of pooled funds and other privately offered funds to pensions plans and other capital accumulation plans and are often the only available exemptions in particular circumstances. We strongly urge the CSA to consider including these exemptions in NI 45-106 so that they are available for the benefit of participants in capital accumulation plans established in all jurisdictions of Canada. We note that our concerns about the availability of these exemptions outside of Ontario are not addressed by the proposed exemptions for the trades of mutual fund securities to capital accumulation plans set out in CSA Notice 81-405 - Proposed Exemptions for Certain Capital Accumulation Plans as they are not as broad as the exemptions for trades in mutual fund securities to corporate sponsored plans described above. Among other issues, CSA Notice 81-405 contemplates that, for the exemptions to be used, the mutual fund must comply with the investment restrictions in National Instrument 81-102.

Statutory Rights of Action

We note that the proposed revision to Rule 45-501 contemplates that the statutory rights of action referred to in section 130.1 of the Act will not apply in respect of an offering memorandum delivered to certain sophisticated entities such as Canadian financial institutions, certain banks and their subsidiaries. While these entities are undoubtedly sophisticated enough to not require statutory rights of action, we suspect that such investors will still insist on having the same rights as other (non-financial institution) investors participating in the same offering. For example, in an offering where there both are non-financial institution investors (who will receive statutory rights) and financial institution investors (who will not be entitled to such statutory rights), we suspect that the financial institutions will negotiate for equivalent contractual rights in order to be placed on the same footing and eliminate any discrepancy as to the rights of various investors. Accordingly, we question the merits of either denying such investors the statutory rights that other investors will receive automatically or effectively reintroducing the requirement to grant contractual rights of action.

* * *

We are pleased to have had the opportunity to comment on the above-noted instruments. If you have any questions or comments please feel free to phone Janet Salter at (416) 862-5886.

Yours very truly,

OSLER, HOSKIN & HARCOURT LLP

[English Translation by the *Autorité des marchés financiers*.]

Montréal, March 22, 2005

Delivered by e-mail

AUTORITÉ DES MARCHÉS FINANCIERS
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C.P. 246, 22e étage
Montréal (Québec)
H4Z 1G3

Attention: Anne-Marie Beaudoin, Director, Secretariat

RE: Request for Comments – Draft Regulation 45-106 respecting Prospectus and Registration Exemptions ("Regulation 45-106")

Dear Madam:

This comment letter is being submitted by Osler, Hoskin & Harcourt LLP to the *Autorité des marchés financiers* ("AMF") in response to the request for comments issued on December 17, 2004 in respect of draft Regulation 45-106 that seeks to harmonize prospectus and registration exemptions by combining applicable provincial and territorial legal and regulatory provisions into a single text. This letter is intended to provide the AMF with comments regarding the impact that Regulation 45-106 is expected to have on Québec securities legislation.

At the outset, this letter is in part further to our correspondence of March 14, 2003 that was filed in response to the public consultation called by the Québec Securities Commission for a review of the financing system for small businesses (a copy of which is enclosed). We are pleased to note that the course being followed for updating the regime pursuant to which small and medium-sized businesses in Québec may access capital markets reflects a number of the issues that we advocated.

With draft Regulation 45-106, we note that the Canadian securities administrators are pursuing efforts to harmonize securities regulation across the country. We believe that the implementation of a modern and harmonized framework for securities regulation in Canada has become an essential condition for maintaining the credibility of the country's capital market and for its successful integration in an increasingly sophisticated worldwide market. This is clear with respect to publicly traded large-cap corporations based in Québec that enjoy special access to the U.S. financial market through the multijurisdictional disclosure system. This is also the case for small and medium-sized counterparts for which financing via international investment funds is an essential part of their development. Inasmuch as access to private financing is particularly difficult, every effort must be made to ensure that these businesses are on an equal footing with competitors from other jurisdictions. The importance of regulation in this regard should therefore not be underestimated.

This preliminary discussion summarizes the general considerations underlying the following detailed comments.

1. **Status of "accredited investor" and fully managed accounts**

The scope of section 45 of the Québec *Securities Act* (the "Act") may not be fully maintained by the definition of "accredited investor" under Regulation 45-106 (paragraphs (p) and (q) of the definition).

2. **French version of paragraph (t) of "accredited investor" definition**

The French version of paragraph (t) excludes a significant element when compared with the English version: The exception refers to the voting securities required by law to be owned by directors of that person. The French version of this paragraph should be based on the similar phraseology used in the French version of paragraph (c) of the definition.

3. Definition of "trade" in Québec

a) paragraph (e) "entering into a derivative"

It is our understanding that a paragraph similar to paragraph (e) under the definition of "trade" exists in certain western provinces. Inasmuch as such a paragraph has been introduced, a prospectus and registration exemption in this regard has been provided for the purpose of allowing transactions involving certain investors. We question the introduction of this concept in Québec in light of the lack of a clearly identified prospectus and registration exemption.

b) paragraph (g) "any act in furtherance of the business of dealing in securities"

As with paragraph (e), this paragraph would, as proposed, be unique to the definition of "trade" in Québec. We believe that the use of a new expression that is not defined, is drafted in broad terms and whose scope is not determined in a policy statement will most certainly cause uncertainty. In order to maximize the harmonization of Québec rules with those of the other provinces, we believe it is advisable to delete this paragraph. As well, perhaps the word "means" should be deleted and the word "includes" added after the term being defined. At a minimum, we believe the scope of the term should be determined either by definition or by giving the term contextual elements in a note contained in the policy statement.

4. Section 2.10 and additional investments

We believe it is advisable to insert an additional investment mechanism in section 2.10 similar to that provided for investment funds in section 2.19. It is our understanding that the primary reason behind subordinating a prospectus and registration exemption of this type (minimum amount investment) is to ensure that the investment is made by a person whose financial resources can absorb the loss of such an amount, and that such an investor must, under the circumstances, be sufficiently sophisticated to assess the potential risk. If it is thus determined that the investor's profile does not require legal protection in connection with the initial investment,

this investor would therefore not need legal protection for the purpose of a subsequent investment with the same issuer. Be that as it may, whether the issuer is an investment fund, operates a business or is another type of issuer, an investor who decides to invest a substantial amount at the time of the initial investment is still capable of assessing risk in connection with any subsequent investment, even of smaller size.

Moreover, the lack of such a right may have the unintentional effect of prompting a person to invest an additional amount of not less than $150,000 so that the transaction is carried out in accordance with securities legislation. If the investor's initial intention is to invest an additional amount of less than $150,000 based on his risk management strategy, the lack of an exemption for additional investments will in some instances impact an investor's management of risk.

Furthermore, shareholder agreements with Québec SMBs usually contain pre-emptive right clauses intended to protect shareholders from dilution of value in ownership. When new shares are issued by the corporation, the portion of shares assigned to a minority shareholder through a subscription is frequently less than $150,000.

5. Section 3.9(2) of policy statement

The conditions applicable to the use of the offering memorandum exemption by investment funds as set out in section 3.9(2) of the policy statement do not seem to fully reflect the conditions stipulated in subsection 2.9(2) of Regulation 45-106.

- - - - -

Please feel free to contact François Leblanc at (514) 904-8176 if you wish to discuss these comments in more detail.

Yours truly,

(signed) Osler, Hoskin & Harcourt LLP
/

cc. Ward Sellers, Osler
Robert Yalden, Osler
Christiane Jodoin, Osler
Shahir Guindi, Osler
François Leblanc, Osler

Shaine Pollock
Legal Counsel
RBC Investments
Tel: (416) 955-5719
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VIA EMAIL

March 17, 2005

Alberta Securities Commission
Autorité des marchés financiers
British Columbia Securities Commission
Manitoba Securities Commission
New Brunswick Securities Commission
Nova Scotia Securities Commission
Ontario Securities Commission
Prince Edward Island Securities Office
Registrar of Securities, Department of Justice, Government of the Northwest Territories
Registrar of Securities, Department of Justice, Government of Nunavut
Registrar of Securities, Government of Yukon
Saskatchewan Financial Services Commission
Securities Commission of Newfoundland and Labrador

c/o:

Blaine Young
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Calgary, Alberta T2P 3C4

Anne-Marie Beaudoin
Directrice du secrétariat
Autorité des marchés financiers
Tour de la Bourse, 800 square Victoria
C.P. 246, 22e étage
Montréal, Québec, H4Z 1G3

Dear Sirs and Mesdames:

Re: Request for Comments for Proposed National Instrument 45-106

We are writing in connection with the Notice of Request for Comments concerning proposed National Instrument 45-106 – Prospectus and Registration Exemptions published at (2004) 27 OSC (Supp-3). This letter is submitted on behalf of RBC Private Counsel Inc.

As one of Canada's premier investment counselling firms, RBC Private Counsel Inc. would like to take this opportunity to indicate our support for proposed NI 45-106 as it specifically relates to the removal of the restriction in Ontario on fully managed accounts investing in the securities of investment funds in reliance on the accredited investor exemption.

It is our view that this change will allow us, if appropriate, to invest the assets of our clients, who would otherwise not fall within the definition of an accredited investor, in the securities of pooled funds which is more cost-efficient than investing in the securities of each individual underlying issuer. Furthermore, we are always supportive of any initiative to streamline and harmonize securities legislation both across Canada and across financial services providers, in this case by putting investment counsellors in the same position as trust companies regarding managed accounts.

Yours very truly,

Shaine Pollock
Legal Counsel

cc : Nancy Ross, Vice President & Chief Compliance Officer, RBC Private Counsel Inc.

ROMSPEN
investment corporation

April 7, 2004

VIA EMAIL TO:
Alberta Securities Commission
British Columbia Securities Commission
Manitoba Securities Commission
New Brunswick Securities Commission
Securities Commission of Newfoundland and Labrador
Registrar of Securities, Department of Justice, Government of the Northwest Territories
Nova Scotia Securities Commission
Registrar of Securities, Legal Registries Division, Department of Justice, Government of Nunavut
Ontario Securities Commission
Prince Edward Island Securities Office
Autorité des marches financiers
Saskatchewan Financial Services Commission
Registrar of Securities, Government of Yukon

c/o

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Dear Sirs/Mesdammes:

Re: Romspen Investment Corporation Comments on Proposed National Instrument 45-106 Prospectus and Registration Exemptions

We welcome the opportunity to provide our comments to the members of the Canadian Securities Administrators (CSA) regarding proposed *National Instrument 45-106 - Prospectus and Registration Exemptions* ("NI 45-106"). Specifically, our comments relate to exclusion of syndicated mortgages from the mortgage exemption contemplated by section 2.37 of NI 45-106. Romspen Investment Corporation ("Romspen") is registered as a mortgage broker under the *Mortgage Brokers Act* (Ontario). We understand that while the request for comment period expired on March 17, 2005, the CSA are amenable to receiving our comments in light of the fact that Romspen is a stakeholder in the mortgage industry and in light of the fact that the CSA is seeking specific comment regarding the exclusion of syndicated mortgages from the exemption contemplated by section 2.37 of NI 45-106.

The commentary relating to syndicated mortgages set out in the Request for Comments issued by the CSA on December 17, 2004 provides as follows:

> The "syndicated mortgage" carve-out is based on the analogous exemption set out in British Columbia securities legislation. There is no similar carve-out in Ontario securities legislation. We believe that, given the potential complexity of syndicated mortgages, they should not be traded under this exemption. **We seek specific comment on the exclusion of syndicated mortgages from this exemption**.

We have a number of comments regarding the above referenced commentary and the potential negative impact on the mortgage industry, particularly in Ontario, of excluding syndicated mortgages from the mortgage exemption contemplated by section 2.37 of NI 45-106.

Investments in Syndicated Mortgages

Investments in syndicated mortgages have been characterized as being complex and as such should not be traded under the mortgage exemption. We respectfully submit that syndicated mortgages are not complex and that investors' understanding of mortgages generally allow them to understand syndicated mortgages. A syndicated mortgage is nothing more than a mortgage where 2 or more persons participate as lenders instead of a single person. Interest and repayment terms are the same as a standard mortgage. Syndicated mortgages are investments secured against real property and are generally not considered speculative. Arguably, investments in syndicated mortgages are superior to investments in standard mortgages because they facilitate the diversification of the risk profile of an investor’s mortgage portfolio by allowing for smaller investments in mortgages from a larger number of borrowers. We respectfully submit that syndicated mortgages and standard mortgages should be treated in the same manner from a public protection perspective.

Existing Mortgage Broker Regulation

In Ontario, dealing in mortgages is currently regulated by the *Mortgage Brokers Act* (Ontario). On March 21, 2005 the Ministry of Finance released a consultation draft of the *Mortgage Brokerages, Mortgage Lenders and Mortgage Administrators Act* (Ontario) (the "Consultation Draft"), which, if enacted, would replace the *Mortgage Brokers Act* (Ontario).

The Consultation Draft provides that if section 2.37 of NI 45-106 is implemented in its current form no duplicative regulation of syndicated mortgages will be contained in the new *Mortgage Brokerages, Mortgage Lenders and Mortgage Administrators Act* (Ontario). We are concerned that this approach would result in a two-tiered mortgage market in Ontario. Presumably, the trading of mortgages, other than syndicated mortgages, would be subject to the new *Mortgage Brokerages, Mortgage Lenders and Mortgage Administrators Act* (Ontario) while the trading of syndicated mortgages would be subject to Ontario securities law. Mortgage brokers would be required to comply with two completely different disclosure and registration regimes in order to deal with mortgages the form of which are the same except for the number of persons participating as lenders.

We respectfully submit that the Ministry of Finance and the Ontario Securities Commission should agree on a uniform approach to the regulation of the trading of mortgages, syndicated or otherwise, in Ontario. We respectfully submit that no change to the status quo should be enacted by either the Ministry of Finance or the Ontario Securities Commission until a uniform approach can be agreed upon.

Universal Registration in Ontario

It appears that Ontario is proposing to adopt the syndicated mortgage carve-out in the interest of harmonizing the mortgage exemption available to mortgage brokers in Ontario with the mortgage exemption available to mortgage brokers in other Canadian jurisdictions. However, the universal

registration regime in Ontario would impose an unfair regulatory burden on mortgage brokers in Ontario. The removal of exemptions for market intermediaries in Ontario would require a mortgage broker in Ontario to seek registration as a limited market dealer in order to avail itself of the accredited investor exemption; mortgage brokers in most Canadian jurisdictions outside Ontario (i.e. British Columbia) are not be subject to such further regulatory burden.

We respectfully submit that Ontario should either abandon its universal registration regime in favour of the approach adopt in most other Canadian jurisdictions or allow syndicated mortgages to be traded under the mortgage exemption to relieve Ontario mortgage brokers of the unfair regulatory burden of registering as limited market dealers.

In summary, our primary concern is that a uniform approach to the regulation of mortgages, syndicated or otherwise, is adopted by the Ontario Securities Commission and the Ministry of Finance. We respectfully submit that investments in syndicated mortgages are not complex and therefore should receive the same treatment as investments in standard mortgages. Given that the Financial Services Commission of Ontario has historically regulated this industry, we respectfully submit that they continue to do so and that the Ontario Securities Commission apply the mortgage exemption to syndicated mortgages.

We thank you for the opportunity to provide these comments beyond the March 17, 2005 deadline. Please do not hesitate to contact the undersigned should you have any questions.

Sincerely,

/s/ Wes Roitman

Wes Roitman
Chief Financial Officer
Romspen Investment Corporation

cc: Mr. Mike Colle, Ministry of Finance (via e-mail - mikecolle.mbconsultations@fin.gov.on.ca)

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Securities Transfer Association of Canada

Richard M. Barnowski
Secretary-Treasurer

February 21, 2005

Alberta Securities Commission
British Columbia Securities Commission
Manitoba Securities Commission
New Brunswick Securities Commission
Securities Commission of Newfoundland and Labrador
Registrar of Securities, Department of Justice, Government of the Northwest Territories
Nova Scotia Securities Commission
Registrar of Securities, Legal Registries Division, Department of Justice, Government of Nunavut
Ontario Securities Commission
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Autorité des marchés financiers Saskatchewan Financial Services Commission
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Dear Commissioners,

The members of the Securities Transfer Association of Canada (STAC) would like to thank the commissions for listening to our concerns and taking the time to consult all stakeholders affected by MI 45-102.

STAC supports the clarifying amendments included in the Dec 17th, 2004 notice of consequential amendments Re NI 45-106.

Members of STAC act as Transfer agent and registrar for approximately 4,700 listed companies on Canadian Exchanges. We work closely with issuers and all securities industry participants in the administration of legended securities.

Yours truly,

Securities Transfer Association of Canada

Per:

CC
Marsha Manolescu
Deputy Director, Legislation
Alberta Securities Commission
marsha.manolescu@seccom.ab.ca

STIKEMAN ELLIOTT

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BY TELECOPIER

December 20, 2004

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Attention: Blaine Young

Autorite des marches financiers
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C.P. 246, 22nd Floor
Montreal, Quebec H4Z 1G3

Attention: Anne-Marie Beaudoin

Ontario Securities Commission
20 Queen Street West
Suite 1800
Toronto, Ontario M5H 3S8

Attention: Mr. John Stevenson, Secretary

Ladies and Gentlemen:

Re: Comments on Proposed National Instrument 45-106 and Related Matters

This letter represents my personal and without prejudice comments (and not those of the firm or any client) with respect to proposed National Instrument 45-106 and related matters. They are in no particular order.

First, however, congratulations on achieving a (largely) harmonious instrument. The tale of concordance is also welcome.

It is however unfortunate that it took so long and was preceded by so many costly changes in the rules, especially in Ontario, where Rule 45-501 (and the associated Rule 45-102) have been changed repeatedly over the past few years, frequently requiring the costly development of new or amended precedents and an education process each time. It is a lesson in the process of rule-making that we are now returning to the private issuer and $150,000 exemptions, which a number of commentators pleaded repeatedly with the Commission to retain, to no avail at the time. In my view, these types of costs should be taken into account by the Commissions in proposing rules, especially where the rules will not be harmonized.

Some of my comments will also be addressed towards reducing the number of "Ontario carve-outs" to make it more harmonious, particularly where their impact is marginal, if any.

Also query the need for all this baffling private placement and resale-based complexity in a situation where Bill 198 liability for continuous disclosure is imminent. However, I will not belabour this point.

National Issues

1. The most important inappropriate change to the status quo (and also one that is not discussed in the request for comments, strangely, and thus may not be appreciated by many commentators) is the insertion of a new creation/use restriction on the $5 million entity branch of "accredited investor", in para. (m) of that definition. That does not exist today, and I expect that it will cause many problems. Its purpose is also not at all clear. Consider a small public company with $5 million in assets and no liabilities. Or consider a family trust, or a private investment vehicle, that does not meet, or as a result of births, deaths, changes in status of its investors or beneficiaries or otherwise no longer meets, the test set forth in para. (t) to the effect that all of its interest-holders are accredited investors. If it wishes to invest $2.5 million or more in a private placement, it cannot, because then the accredited investor will be "used primarily to purchase securities under these exemptions" as stated in s. 2.3(6). Surely this is not desirable. A $5 million vehicle is sophisticated, and merely because it wishes to buy into private placements it should not be precluded from doing so. Of course, the entity itself will be subject to securities laws in raising its own funds, so its investors are protected in any event. This restriction seems to serve no public policy and likely to cause substantial problems. I personally also do not understand what is wrong with creating a vehicle to invest in private placements, so the rationale of the first part of s. 2.3(6), re the "creation" restriction, is not clear to me. However, the "use" restriction is even less understandable.

2. In any event, the reference to "these exemptions" in s. 2.3(6)(b), if it will remain, should be limited to the s. 2.3 exemption, and not other exemptions in NI 45-106 or elsewhere.

3. Transitional exemptive relief should be provided to facilitate transactions (including private placements and control block distributions) that are underway under existing requirements when the new rules come into force.

4. Should para. (c) of the definition of "accredited investor" refer to voting shares, instead of voting securities? In para. (s), the "and" after (d) should be "or", I think.

5. In the definition of "private issuer" in NI 45-106, could options and convertible debt also be excluded, as these are unlikely to be subject to either the constating documents or agreements between or among security holders. Any restrictions would likely be imposed in the terms of the instrument or in another agreement between the holder and the issuer. Also, as noted elsewhere, should Ontario closely-held issuers be deemed to be private companies at the time of entry into effect of the rule?

6. In section 2.2(3), the words "in Canada" should be added after "every security holder".

7. Query the rationale for sections 2.3(4) and (6). The latter seems particularly ill-advised, as noted above.

8. In section 2.4(3), should (i) or (j) as they relate to (h) also be covered?

9. In section 2.10(3), for similar reasons to those set forth above in respect of the $5 million accredited investor test, para. (b) should be deleted (and para. (a), if it should remain, should refer only to section 2.10). The requirement in section 2.10 for a cash payment to use the $150,000 exemption should not require any more than $150,000 in cash to be paid, at the time of usage. In other words, one should be able to invest $400,000 represented by $150,000 in cash and $250,000 via a commitment. See also section 3.10 of CP 45-106.

10. Section 2.11(1)(b)(i) needs to reflect the possibility of an accidental failure to deliver to every securityholder, for whatever reason. Also, no particular securityholder's approval is required typically, just the class, so the wording may be inaccurate.

11. Should section 2.12(1) also refer to securities or other property, including cash?

12. Section 2.16 does not clearly apply to both the tender to a take-over bid by a target shareholder, and the issuance of securities by a bidder in exchange in a securities exchange bid. In fact, ss. 2.15 suggests that the tender process is not

covered for a take-over bid (i.e. issuer bids are treated differently for some reason), while section 2.17 suggests that "under" a bid may refer to a tender and not the bidder's issuance of a security. Some clarification appears to be warranted.

13. In section 2.23, does this suggest that a single trustee of an income trust or other similar issuer, which has several trustees, controls the trust? If so, it should probably be adjusted.

14. In section 2.24(4), should paras. (2) and (3) also be covered?

15. I would request the retention of section 2.30. Much time and expense has been wasted in determining available exemptions in intra-corporate family situations over the past few years in Ontario, and this exemption is used frequently in the formation stage of companies. It would be a shame to lose another useful exemption that has no investor protection effects.

16. The word "dividend" in section 2.32(2) should say "dividend or distribution", to cover non-corporate issuers and be consistent with para. (1).

17. In section 2.34, while issuances of shares to an underwriter are caught, the exercise of options or warrants, including special warrants, are not. Presumably this is intended, on the basis that the securities being sold should be covered in a prospectus (absent an available exemption) but compensation securities should not?

18. Query whether it is appropriate from either an investor protection or from a foreign relations perspective (including international treaty obligations) to require foreign government debt, but not Canadian government debt, to be rated as is the case under section 2.35.

19. In section 2.43(1)(b), I recommend adding "of the issuer" after "existing security holder", as in (a). Could the policy give some guidance as to what is required under section 2.43(2)(b) to satisfy a regulator?

20. Should section 3.6(1) not cover CNQ, as well as other marketplaces, in a competitive markets scenario? Also, designation seems sufficient, without the need for their rules to be "substantially similar". They could be different, and still acceptable.

21. Section 3.7(b) is too limiting and does not accord with what occurs in practice today. Many commentators, including representatives of registered dealers or advisors, comment in newspapers without falling clearly into these very narrow exemptions. They may not give advice solely through such media, they may give advice through radio or TV or the emerging free newspapers, or in books, etc. These should be reworked to extend to cover these common situations in order

to accord with market reality. The legitimate investor protection issue is presumably unqualified and unregistered people pushing securities for compensation from the issuer (or a broker), and that should be addressed without unduly restricting freedom of expression and without discouraging educational and informative discussions.

22. Section 4.2 (2) should also exclude the need to comply with para. (1)(c).

23. In section 8.1(1)(a), should it be clarified that the securities referred to are the initially acquired securities?

24. In Form 45-106F1, if industries are to be specified, should service industries, distribution industries, retail sales businesses and food service businesses, among others, be covered? Also, is a explicit privacy consent necessary (as referred to in Form 45-106F1) where the disclosure is required by law? See also Form 45-501F1 in Ontario.

25. The application of NP 48 to the various exemptions in NI 45-106 should be clarified, hopefully by confirming that (as its terms, as set out in its Appendix A, suggest) it is of no force and effect with respect to any of them.

NI/MI 45-102

26. It has always troubled me that, following a merger transaction, such as an amalgamation of two issuers, public securityholders are subject to "ordinary course" resale restrictions such as those contained in ss. 2.5(2)(5) and (6) or NI/MI 45-102. This seems inappropriate from a policy perspective.

27. Section 2.8(2)(5) of NI/MI 45-102 does not refer to a pledge, and in my view it should be clarified, in order to avoid any confusion, that it does not apply to pledgees, as the term selling security holder in the form is sometimes used to describe pledgees as well.

28. What will happen, as a transitional matter, to underwriters from a resale perspective who took options or other securities under the accredited investor exemption in effect today?

CP 45-106

29. If Ontario does not wish to adopt the friends and family or offering memorandum exemptions, so be it, but it should not then in my view also effectively restrict Ontario-based issuers from using those exemptions by adding provisions such as s. 1.4 of CP 45-106. This will hurt their capital-raising competitiveness vis-à-vis non-Ontario competitors without in any way being relevant to investor protection. In fact, given the overall similarity of the requirements in the various provinces, and where they are different the

consciously different policy choices made by the applicable regulator, it is unclear why as a policy or constitutional matter any jurisdiction should seek to regulate the raising of capital by companies in its territory from investors in other Canadian jurisdictions. A better approach than s. 1.4 of CP 45-106 would be for each jurisdiction to either confirm the interpretation that the place of residence of the investor determines the exemptions available, or alternatively if they are worried about capital-raising outside Canada, to grant an exemption to issuers based in their jurisdiction in respect of capital-raising in other Canadian jurisdictions. In any event, the "coming to rest" analysis in Interpretation Note 1 should be referred to for Ontario purposes. This applies to other provinces also, where they diverge from national approach. See also section 3.2 in CP 45-501 in Ontario.

30. Section 1.8 of CP 45-106 should be restricted to the $150,000 exemption.

31. Section 4.2 of CP 45-106 should also refer to the Bankruptcy and Insolvency Act.

Ontario Issues

32. The non-Canadian adviser qualification to para. (q) of the accredited investor definition seems a bit strange. It is hard to see how a non-registered adviser could be acting as an adviser to a client in Ontario without being in breach of the law, save and except for the "permitted client" list or other tight constraints set forth in OSC Rule 35-502. Accordingly, given the restricted nature of these clients and activities, what exactly could the OSC be concerned about? By deleting this carve-out, uniformity would be increased without any apparent investor protection impact.

33. I welcome the return of the private issuer exemption, as the closely held issuer exemption was quite unworkable. However, what will happen from a resale perspective to persons who acquired securities under the closely-held issuer exemption? Also, issuers that are now closely-held issuers should be deemed to be private issuers, I suggest, as at the date of entry into force of the new rule.

34. The promoter resale rule was adopted in OSC Rule 45-501 without much notice or comment, and is somewhat difficult to fathom from a policy perspective. Why should a former promoter who now holds only a small percentage of the company and has no ongoing involvement in its affairs be subject to a prospectus requirement forever? It seems unnecessarily complex, and unwise, to continue this state of affairs under section 2.15 and Appendix G forever for promoters who acquired securities during the short period that these provisions have been in effect. Five or ten years from now, it will be hard to determine what exemption should apply, and little benefit (and much complexity) seems likely to result from continuing this situation. The founder concept seems much more appropriate policy-wise.

35. While the request for comments suggests that the term "COATS security" (Reg. s. 152) would be changing, I did not find any reference to that in the body, perhaps through oversight?

36. Preferably the "private issuer" definition in Ontario (see the MI 45-102 amendments) would return to its roots and refer to registered holders, as it is not always possible to know the beneficial ownership of securities, even in private company situations, given personal issues such as family breakdown, the establishment of new relationships, divorce and death. It is also a bit unclear why joint registered holders are deemed to be a single beneficial owner, as they may jointly hold (such as in a trust situation) for a number of beneficial owners.

Thank you for considering these comments.

Yours truly,

Simon Romano

SAR/he

March 17, 2005

British Columbia Securities Commission
Alberta Securities Commission
Saskatchewan Financial Services Commission
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
Office of the Administrator, New Brunswick
Registrar of Securities, Prince Edward Island
Nova Scotia Securities Commission
Securities Commission of Newfoundland and Labrador
Registrar of Securities, Northwest Territories
Registrar of Securities, Yukon Territory
Registrar of Securities, Nunavut

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Dear Sirs and Mesdames:

Re: Request for comments on Proposed National Instrument 45-106 Prospectus and Registration Exemptions ("NI 45-106")

We have reviewed the Canadian Securities Administrators' ("CSA") National Instrument 45-106 ("NI 45-106") with interest and once again appreciate the opportunity to provide our comments. TD Asset Management Inc. ("TDAM"), like many other asset managers, is firmly of the view that any effort made to reduce or eliminate jurisdictional irregularities in the application of securities regulations will benefit both investors and the investment fund industry. To the extent that NI 45-106 attempts to harmonize prospectus

and registration exemptions nationally, it is a significant improvement over the current regime. Despite this, we believe that NI 45-106 still contains many carve outs and exceptions. We again urge the CSA to recognize that in Canada fragmented securities regulation is a constraining factor that has a serious impact on our industry.

General Commentary

By way of background, TD Asset Management Inc. ("TDAM") is one of Canada's largest asset managers. As of October 31, 2004, TDAM manages approximately $34.7 billion in retail mutual fund assets on behalf of more than 1.3 million investors at that date. TDAM and its affiliates manage approximately CDN$124 billion for mutual funds, pooled funds and segregated accounts and provided investment advisory services to individual customers, pension funds, corporations, endowments, foundations and high net worth individuals. TDAM manages several pooled funds that are distributed across Canada pursuant to prospectus and registration exemptions. For these products our client base is made up of both institutional and high net worth clients.

Fully Managed Accounts (Section 1.1, "accredited investor" subsection (q))

Ontario's decision to adopt an expanded definition of *accredited investor* so that fully managed accounts may invest in investment funds is one of the most welcome consequences of NI 45-106. As you know, Ontario previously extended this exemption to all issuers other than mutual funds and non-redeemable investment funds. TDAM has long believed that the risk associated with investing in pooled funds is, in many cases, no different or considerably less than the risk associated with investing in many issuers who were previously able to rely on the managed account exemption. Under NI 45-106 a fully managed account is subject to the oversight of a registered investment adviser. By allowing pooled funds to rely on this exemption, NI 45-106 eliminates an unnecessary distinction between pooled funds and other issuers while continuing to ensure proper oversight of the account.

One potential issue for consideration is Ontario's decision to exclude adviser's registered in foreign jurisdictions. Given the registration regime in Ontario we would like clarification on the policy issues this exception addresses. Our understanding is that anyone who advises an Ontario resident must either be fully registered as an adviser or an international adviser. As a result, the Ontario carve-out appears aimed at advisers registered in a foreign jurisdiction who are advising non-Ontario residents. We request clarification on the policy reasons behind Ontario's decision to exclude advisers registered in a foreign jurisdiction.

Minimum Purchases (Section 2.10)

The reintroduction of the minimum purchase exemption is another harmonization effort that TDAM fully supports. Like the accredited investor exemption, requiring a minimum purchase ensures that investors have a minimum level of sophistication. By harmonizing this rule, the CSA will ensure consistent standards are applied across all jurisdictions.

We have two concerns with the current formulation of the minimum investment rule:

- the requirement that the cost of the securities be paid in cash is overly restrictive. To facilitate transactions and reduce transaction costs in specie transfers are an effective method of purchasing units. Requiring that securities be liquidated prior to purchasing units creates unnecessary transaction costs; and

- the attempt to prevent entities created primarily to permit purchases of securities under exemptions or used primarily to make such purchases may have unintended consequences for entities that would otherwise be considered sophisticated.

Offering Memorandum Exemption (Section 2.9)

Outside of Ontario, the offering memorandum exemption has continued to be a difficult exemption for investment funds to utilize due to the disclosure required in the offering memorandum. TDAM encourages the CSA to tailor the necessary disclosure in relation to investment funds. Specifically, portions of the offering memorandum's required disclosure do not apply to certain investment funds including, information requirements related to working capital deficiency and short term objectives.

Ontario's decision not to offer this exemption despite it being available in all the other provinces raises questions about how the capital markets in Ontario differ from the rest of the country in relation to this exemption. Various checks and balances have been built into the offering memorandum exemption by the other provinces to ensure that issuers relying on this exemption have appropriately sophisticated investors that understand the associated risks. TDAM advocates for the establishment of an offering memorandum exemption in Ontario.

Investment Fund Re-Investment (Section 2.18)

TDAM welcomes a cross jurisdictional exemption for the reinvestment of dividends or distributions (together, "Distributions"). Currently various provinces have different approaches to this which inevitably results in expensive and time-consuming exemption applications. We believe the exemption, as currently drafted, may be too

restrictive by insisting that Distributions may only be reinvested in the same class or series as the securities to which the Distributions are attributable. We urge the CSA to permit Distributions into other series or classes with the same portfolio holdings to provide the flexibility needed to ensure portfolios as a whole are appropriately balanced.

Additional Investment in Investment Funds, (Section 2.19)

Consistent with our comments above, TDAM advocates that additional investment in an investment fund should be exempt as long as the fund maintains the same or similar portfolio assets. The current wording of the exemption only provides relief where the additional purchase is for the same class or series as the initial purchase.

Limited Market Dealer

A notable Ontario exception contained in NI 45-106 is the retention of universal registration and, as a consequence, the limited market dealer registration. By removing various registration exemptions for market intermediaries, Ontario is the only province where registered advisers must still maintain a limited market dealer registration when investing managed accounts in investment funds. The policy basis for Ontario retaining this requirement while the rest of the provinces make exemptions available to market intermediaries is not clear. TDAM is of the view that NI 45-106 presents an excellent opportunity to eliminate an additional layer of regulation that most of the provinces have already dispensed with.

Summary

To summarize, we appreciate the time and effort the CSA has put into responding to investors and the mutual fund industry and we are pleased with the progress that has been made in achieving a harmonized exemptions rule in Canada. Before implementing the rules we feel strongly that further consideration should be given to creating a truly harmonized instrument that does not include carve-outs and provincial exceptions. We would be happy to provide any further explanations or submissions regarding the matters raised above and would also be willing to make ourselves available for a further dialogue.

Yours truly,

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March 16, 2005

Via E-Mail & Fax

British Columbia Securities Commission
Alberta Securities Commission
Saskatchewan Financial Services Commission
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers du Québec
Nova Scotia Securities Commission
New Brunswick Securities Commission
Office of the Attorney General, Prince Edward Island
Securities Commission of Newfoundland and Labrador
Registrar of Securities, Government of Yukon
Registrar of Securities, Department of Justice,
Government of the Northwest Territories
Registrar of Securities, Legal Registries Division,
Department of Justice, Government of Nunavut

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Senior Legal Counsel
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Calgary, Alberta T2P 3C4

c/o Anne-Marie Beaudoin
Directrice du secrétariat
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Tour de la Bourse
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Montreal, Québec H4Z 1G3

Dear Members of the Canadian Securities Administrators,

Re: Request for Comments on Proposed National Instrument 45-106 *Prospectus and Registration Exemptions* (National Instrument or NI 45-106)

TSX Group Inc. welcomes the opportunity to comment on behalf of both Toronto Stock Exchange (TSX) and TSX Venture Exchange (TSX Venture) (collectively, the Exchanges) on proposed NI 45-106, the related proposed forms and Companion Policy 45-106 CP *Prospectus and Registration Exemptions* (the CP) published by the Canadian Securities Administrators (the CSA) on December 17, 2004.

We commend the CSA for consolidating the registration and prospectus exemptions currently found under various provincial statutes, regulations, rules, instruments and blanket orders into a single national instrument. This consolidation will benefit our issuers by improving the efficiency of the capital raising process, and by reducing the time and the costs currently incurred by issuers' professional advisers in reviewing various provincial exemption regimes.

However, despite the progress that has been made by proposed NI 45-106, fragmentation remains where certain jurisdictions have chosen either to modify or not adopt certain exemptions contained in the National Instrument. Although we recognize that fragmentation often stems from attempts to satisfy regional interests, when uniformity is compromised, the costs of compliance may be increased. While NI 45-106 represents a strong step in the direction of uniformity, we hope that efforts will be made to further harmonize NI 45-106 where possible, perhaps in the final version of NI 45-106 or in the future after it has been in effect and undergoes periodic reviews.

In the interim, we recommend that where a jurisdiction has modified or opted-out of a particular exemption into a local rule, that the National Instrument, to the extent possible without relying heavily on cross-referencing, make some reference as to what the local exemption is and/or where it can be located.

Our specific comments on the proposed National Instrument are in the attached Appendix 1.

Thank you for the opportunity to comment on the National Instrument. Should you wish to discuss any of the comments with us in more detail, we would be pleased to respond.

Sincerely,

TSX Inc.

"Rik Parkhill"

TSX VENTURE EXCHANGE INC.

"Linda Hohol"

APPENDIX 1:
Comments on NI 45-106

PART 1: DEFINITIONS AND INTERPRETATION

1.1 Definitions

AIF - The definition of AIF should include information circulars that are prepared in the context of Reverse Takeovers (RTOs) and Changes of Business (COBs) undertaken by TSX Venture issuers (collectively, RTO Circulars). The disclosure included in RTO Circulars is based on prospectus level disclosure relating to the issuer, target company and the resulting issuer, and is substantially similar to the disclosure included in a circular prepared by a TSX Venture issuer undertaking a Qualifying Transaction (QT Circular), which is included in the definition of AIF in the National Instrument . QTs, RTOs and COBs are all transactions which give rise to new listings on TSX Venture, have similar listing and filing requirements, and undergo similar levels of review. In order to prevent a situation where one listing method is favoured over another, issuers completing these transactions should be placed on equal footing in respect to any advantages provided by having a current AIF.

PART 2: PROSPECTUS AND REGISTRATION EXEMPTIONS
Division 1: Capital Raising Exemptions

2.9 Offering Memorandum

The Exchanges support the inclusion of this exemption in the National Instrument. However, we are concerned that the proposed exemption is not uniform among the jurisdictions that have chosen to adopt it. Currently, two versions of this exemption are proposed in NI 45-106. We recommend that the CSA adopt only the version in section 2.9(1) of NI 45-106, which is proposed for use in only British Columbia, New Brunswick, Nova Scotia and Newfoundland.

The adoption of different versions of this exemption defeats the principles of uniformity and increases the costs of compliance to issuers. Further, Ontario has opted out of this exemption in NI 45-106 and has proposed to continue with its own version in a local rule. As such, we recommend that efforts be made to further harmonize the offering memorandum exemption, to the extent possible, in the final version of the National Instrument, and on a going forward basis.

2.10 Minimum Amount Exemption

We support the inclusion and harmonization of the $150,000 minimum amount exemption. It is important that the minimum amount be consistent among jurisdictions, and the resulting increase in the minimum amount for certain jurisdictions should not have a negative effect on the issuer's ability to raise capital in that jurisdiction.

Division 2: Transaction Exemptions

2.4 Securities for Debt

We support the introduction of the securities for debt exemption and the corresponding guidance provided in the CP. The exemption provides these issuers with flexibility in managing their

resources and is often critical in facilitating reorganizations and reactivations of issuers that may otherwise not be possible if the issuer is unable to settle its debt.

Division 5: Miscellaneous Exemptions

2.30 Incorporation or Organization

Since the National Instrument will include various exemptions that will help facilitate the organization of an issuer, such as the private issuer exemption; the family, friends and business associates exemption; the family, founder and control person exemption; and the employees exemption, there is no need for the incorporation or organization exemption, as contemplated by proposed section 2.30.

PART 5: OFFERINGS BY TSX VENTURE EXCHANGE SHORT FORM OFFERING DOCUMENT (SFOD)

We support the introduction of this exemption into the National Instrument. However, we note that Ontario is not proposing to adopt this exemption. Our experience with this exemption in British Columbia, Alberta and Saskatchewan is that it has been widely used by issuers and has improved the capital raising efforts of TSX Venture issuers. We are concerned that if this new exemption is not available in Ontario, it will result in a significant subset of TSX Venture issuers being disadvantaged in their ability to raise funds in Ontario.

In addition, please see our comments relating to the definition of AIF for the arguments in support of allowing the RTO Circular to serve as an AIF. By including RTO Circulars in the definition of an AIF, TSX Venture Issuers who have completed an RTO Circular will be able to use the SFOD to raise funds.

Other Comments

Bonus and Finder's Fee Exemption

We note that an exemption similar to British Columbia's bonus or finder's fee exemption currently found at sections 89(e) and 128(f) of the Securities Rules (BC) (the BC Exemption) is not proposed in NI 45-106. The BC Exemption allows TSX Venture issuers to issue securities as consideration to non-insiders for services performed in connection with arranging a loan, acquiring or disposing of an asset, or making various other distributions. This flexibility can be critical to an issuer with limited cash resources, where the services of an arm's length finder are necessary to facilitate the certain transactions. As a result, we believe this exemption should be included in the National Instrument, but should also exclude the residency restrictions contained in the current BC Exemption.

VAN ARBOR
ASSET MANAGEMENT LTD

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Nova Scotia Securities Commission
Office of the Attorney General, Prince Edward Island
Securities Commission of Newfoundland and Labrador
Registrar of Securities, Legal Registry Division, Department of Justice, Government of Nunavit
Registrar of Securities, Department of Justice, Government of the Northwest Territories
Registrar of Securities, Government of Yukon

March 16, 2005

Dear Sirs / Madams

SUBJECT: Comments regarding the Draft NI 45 – 106

PRECIS

The proposed Prospectus and Registration Exemptions as they relate to Investment Funds are not clear. The three main exemptions available to arm's length investors are: Accredited Investor (the "RICH") can invest a fund's set minimum amount – generally $5,000; the Minimum Amount Investment (the "POOR") must invest a minimum amount of $150,000; and for those that receive an Offering Memorandum (the "LITERATE") can invest a fund's set minimum amount.

The desire to harmonize the Prospectus and Registration Exemptions is a laudable endeavour considering the diversity of the 13 regulatory bodies in terms of their capital raising interests and their regulatory mind set. To have one document that sets out each jurisdiction's exemptions is of tremendous benefit to the Canadian securities industry and it is hoped that this process continues.

BACKGROUND

My purpose in providing comment on the proposed NI 45-106 follows from the fact that the current Canadian regulatory regime forces an investment fund that might otherwise offer its securities by way of a prospectus into the Prospectus and Registration Exemptions regime. For investment funds that fall outside NI 81-102 and NI81-104, a receipted prospectus is not an alternative and therefore the funds may decide as a second best to use an Offering Memorandum as a disclosure document.

An example of how a fund could fall outside NI81-102 can be typified when a fund's investment policy creates a portfolio that falls adrift of section 2.6. As a specific instance a fund that uses leverage, may be in line with the leverage policy of the IDA, but it will be outside the mandate for investing as set out in section 2.6, which allows a zero tolerance for leverage. Further, as the investment fund does not invest using derivatives, it can not be classified as a commodity pool.

DRAFT POLICY

In the **Section 2.9 Offering Memorandum** certain members of the CSA are allowing potential investors to invest if the potential investor is willing to sign a "Risk Acknowledgement Form" acknowledging the risk of investing in those securities so offered. The use of this exemption seems to bridge the gap between the Accredited Investor Exemption and the Minimum Purchase Exemption by allowing a potential investor to invest the fund's set minimum amount.

The Offering Memorandum exemption can be used in some jurisdictions without limitations (Section 2.9(1)), in other jurisdictions up to $10,000 without an eligibility advisor and over that amount with the assistance of an eligibility advisor (Section 2.9(2)) and in other jurisdictions not at all (Ontario and Yukon). However, Section 2.9 (2) specifically excludes investment funds, excepting section 2.9(2) (d) investment funds.

The fact that some jurisdictions are willing to allow the Offering Memorandum exemption but specifically carve out investment funds seems to warrant further explanation.

- Why is the Offering Memorandum Exemption not available in some jurisdictions?

- Why is an investor explicitly excluded from using this exemption for the purchase of an investment fund in some jurisdictions?

- Should a proverbial securities lawyer, or other investor, that earns less than $200,000 or has less than $1,000,000 in assets be prohibited from purchasing units of an investment fund, unless that investor is willing to invest an amount that is greater than 75% of their annual income or greater than 15% of their asset base?

- If investment funds are not to be allowed the use of the Offering Memorandum Exemption, and if full, true and plain disclosure is a preferable avenue; should not the mutual fund / commodity pool regime be expanded in conjunction with this policy?

- To date, do any investment funds reside within the constraints of Section 2.9(2)(d)?

Companion Policy

3.9 (2) Can this section be written without the use of a double negative and an exception?

Closing

The benefit of having all of the Prospectus and Registration Exemption policies of each of the 13 regulatory bodies merged into one policy is of tremendous benefit to the investment community. To specifically carve out investment funds from the Offering Memorandum Exemption is perplexing and I would be interested in the reason for the carve out.

Thank you for the opportunity to comment on this draft policy.

Yours truly

Andrew Parkinson
Managing Director
Van Arbor Asset Management Ltd.

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April 7, 2005

VIA EMAIL TO:

Alberta Securities Commission
British Columbia Securities Commission
Manitoba Securities Commission
New Brunswick Securities Commission
Securities Commission of Newfoundland and Labrador
Registrar of Securities, Department of Justice,
Government of the Northwest Territories
Nova Scotia Securities Commission
Registrar of Securities, Legal Registries Division,
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Ontario Securities Commission
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Autorité des marches financiers
Saskatchewan Financial Services Commission
Registrar of Securities, Government of Yukon

Dear Sirs:

Re: Proposed National Instrument 45-106 and Proposed Amendments to OSC Rule 45-501

Although we realize that the comment period in respect of the above noted matters expired on March 17, 2005, our attention was only recently drawn to this matter by publication of the proposed replacement for the *Mortgage Brokers Act*. We wish to provide comments on the referenced proposals to the extent they relate to mortgage syndications. Our delay in commenting arises from the fact that the Ministry of Finance (Ontario) issued a consultation draft of a new *Mortgage Brokerages, Mortgage Lenders and Mortgage Administrators Act* on March 21, 2005, which was received on March 22, 2005, after the March 17, 2005 comment period expired. We thank you for accommodating our request to comment at this time.

Vector Financial Services Limited is a company that is registered under the *Mortgage Brokers Act* (Ontario). Its principals have been registered mortgage brokers in Ontario since 1973 and are in the business of originating, funding, purchasing, selling, and servicing mortgage investments. Since 1973 they have arranged and managed in excess of a $1,000,000,000.00 of syndicated mortgage investments.

We have been provided with a copy of and have carefully reviewed the submissions made to the addressees by Firm Capital Corporation in their letter dated March 30, 2005, and we wish to endorse and embrace their response.

We wish to comment on the impact of transfer of jurisdiction of syndicated mortgages from the *Mortgage Brokers Act* to the *Securities Act* and, in particular, we wish to comment on the impact of section 2.37 of a Proposed National Instrument NI 45-106. Section 2.37 (1) proposes to exempt trades in mortgages on real property effected by a licensed mortgage broker from the dealer and prospectus requirements of the *Securities Act*. Unfortunately, Section 2.37 (2) removes this exemption with respect to syndicated mortgages.

We believe that syndicated mortgages should not be excluded from this exemption. The current and proposed legislation for the mortgage brokerage industry, namely, the *Mortgage Brokers Act* and the proposed *Mortgage Brokers, Mortgage Lenders and Mortgage Administrators Act* is designed to and does protect investors in a mortgage investment. The consultation draft - for discussions purposes of the new *Mortgage Brokers Statute* at part IV states that concerns have been expressed that the current mortgage exemption from the *Securities Act* "does not provide adequate protection to investors given the potential complexity of these investments" and that it is for this reason that Canadian Securities Administrators believe that further and additional protection would be given to the investors under the *Securities Act*.

We respectfully disagree with this proposition. We submit that the existing protection set out in Form 1 of the *Mortgage Brokers Act* would not be significantly enhanced by bringing the syndicated mortgages under the *Securities Act*. ***The due diligence required of a mortgage broker and the level of disclosure required for one lender in a mortgage transaction does not change when the lender consists of two or more persons.*** If the required information concerning the location and appraised value of the land, the terms and conditions of the charge, the principal amount, interest rate and term of the mortgage together with an outline of the risks of the mortgage investment are provided, as required under the current Act, the mortgage investors (whether one lender or two or more lenders) will be adequately protected.

We submit that it <u>is not efficient</u> to have a segregated portion of the mortgage market regulated by two organs of government. All aspects of the mortgage transaction are governed by the *Mortgages Brokers Act* and there is no new information which would be provided on a term sheet which would enhance the disclosure to the investors which could not be added as a required element of Form 1. We endorse the representation made in the Firm Capital Corporation letter to the effect that "If mortgage syndications were governed by securities

legislation, a dual registration regime would be created resulting in increased compliance costs and administrative burden as well as duplication and overlap of regulations." and we would add "without an apparent benefit".

We are concerned that the additional requirements imposed on mortgage brokers by the *Securities Act* will have an extremely negative impact on raising capital for mortgage transactions in that many investors will be unable to diversify their risk by investing in mortgages. The financial strength test for accredited investors is not necessarily the appropriate test for a mortgage investor because of the additional protection afforded an investor by the nature of the underlying asset. It is clear that in our current economy the increase in real estate values has given rise to larger mortgages and need for two or more lenders to participate in the ownership of a mortgage. We are concerned that the accredited investor qualifications would eliminate a number of investors thereby denying them the security that comes from a real estate based investment. Further, the need for limited market dealer involvement in Ontario will restrict the number of mortgage brokers who will participate in syndication. Many current mortgage brokers will not be prepared to qualify and register as limited market dealers for the broader market and their specialized experience and knowledge of the industry will be lost. The additional costs and paper work for reporting and accounting will inevitably be passed on to the lenders or borrowers thereby making the transaction unnecessarily more expensive. Finally, we see that this change may result in significant prejudice against small investors in smaller country centers and hurt the local economies.

From our perspective this proposed change has been effected without any cost benefit analysis being done in the industry. As it has been explained to us, the *Securities Act* does not currently reflect the way in which a mortgage is created, syndicated and managed. We believe that certain definitions under the *Securities Act* may need to be amended in order to accommodate our industry adequately.

Preliminary questions which arise in our mind and for which there do not appear to be answers as yet are:

1. Will mortgage syndicators have to be qualified as both mortgage brokers and limited market dealers, or will they have to engage a limited market dealer at further and additional cost to the transaction?
2. Is it the mortgage broker the promoter in a syndicated mortgage transaction?
3. Will the mortgage broker be in a position where he or she will be acting as a broker, a limited market dealer, a promoter and a deemed issuer of the syndication?
4. Who is the issuer in a syndicated mortgage transaction? Clearly the borrower (mortgagor) is the party giving the original charge on his or her land to the mortgage broker or investors (in such limited cases where the investors go directly on title), as the case may be and could be considered the original issuer.
5. As stated above, the disclosure required for one investor is the same disclosure for two or more investors. If syndicated mortgages are removed from the *Mortgage Brokers Act*, the result will be two types of disclosure, one for single lenders and one for multiple lenders?

It could be argued that there is already a greater disclosure required under the *Mortgage Brokers Act* than under a term sheet required under the *Securities Act*. Notwithstanding the disclosure requirements under either Act, the investors who invest in mortgages on identifiable pieces of land, frequently perform their own due diligence, often review the valuation and appraisal reports, examine the qualities of the real estate underlying the security, require proof of title or title insurance and in all cases the mortgage broker engages solicitors on behalf of the investors to review the mortgage documentation and address all legal issues without regard to the size of the Mortgage or the number of investors involved, before the investors commit their funds to the mortgage pool. Notwithstanding their knowledge of real estate and the security it affords, under the *Securities Act* these investors may be precluded from investing as they may not meet the accredited investor criteria appropriate for investment in less tangible security. This does not seem reasonable in our view.

On the basis of the foregoing and for the issues raised in the Firm Capital Letter, it seems to us that this change is being promoted without a proper consultation and thorough analysis of the way in which the *Securities Act* will apply to our industry. As a result, we would strongly recommend that prior to effecting the change, the Ontario Securities Commission set up a task force to canvas the industry and industry participants. We also believe that the Securities Commission should provide the industry with the consequential amendments that will be required to other areas of the *Securities Act* in order to adequately regulate the syndicated mortgages part of our industry.

We appreciate the Commission's courtesy in permitting us to provide our comments after the March 17th deadline.

Please feel free to contact the undersigned should you have any questions with respect to this matter.

Yours very truly,

Vector Financial Services Limited

Per: *Frank Laurie*
(Computer Generated Signature)

Frank Laurie - President