

CSA Multilateral Notice and Request for Comment Proposed Amendments to National Instrument 45-106 *Prospectus Exemptions* relating to Reports of Exempt Distribution

June 8, 2017

Introduction

The Canadian Securities Administrators (CSA or we) are publishing for a 90-day comment period proposed amendments (the **Proposed Amendments**) to National Instrument 45-106 *Prospectus Exemptions* (NI 45-106) that would amend the report of exempt distribution set out in Form 45-106F1 *Report of Exempt Distribution* (the **Report**). The British Columbia Securities Commission did not publish the proposed instrument for comment, although staff anticipates doing so in the near future, after obtaining necessary approval.

The Proposed Amendments are set out in Annex A of this notice. Certain other relevant information is set out in Annexes B through D. This notice will also be available on the following websites of CSA jurisdictions:

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

Substance and Purpose

Issuers and underwriters who rely on certain prospectus exemptions to distribute securities are required to file the Report within the prescribed timeframe.

The Proposed Amendments:

- provide greater clarity and flexibility regarding the certification requirement of the Report while still supporting the regulatory objectives of filed Reports being true and complete, and
- streamline certain information requirements to assist filers in completing the Report while still providing us with the information necessary for oversight and policy development.

The Proposed Amendments are primarily intended to address concerns expressed by foreign dealers conducting offerings into Canada, and Canadian institutional investors, about the unintended effects of the certification requirement and other information requirements in the

Report on these offerings. However, we believe the Proposed Amendments will be beneficial to all filers.

The Proposed Amendments also include minor amendments addressing feedback received by CSA staff following the implementation of the Report.

Background

In April 2016, we published the Report which came into force in all CSA jurisdictions on June 30, 2016.¹ The Report replaced both the prior version of Form 45-106F1 *Report of Exempt Distribution* and Form 45-106F6 *British Columbia Report of Exempt Distribution*. The Report was intended to:

- 1) reduce the compliance burden for issuers and underwriters by having a harmonized report of exempt distribution, and
- 2) provide securities regulators with the necessary information to facilitate more effective regulatory oversight of the exempt market and improve analysis for policy development purposes.

In spring and summer 2016, CSA staff became aware of concerns expressed by foreign dealers conducting offerings into Canada, as well as Canadian institutional investors, about the certification requirements and certain information requirements in the Report. We understand that in certain instances, Canadian institutional investors noted that they had been excluded from participating in foreign offerings into Canada in part due to dealers' concerns regarding the certification of the Report as well as the more extensive information required in the Report.

As a result of these concerns, we provided relief from the requirement to disclose whether a purchaser is a registrant or an insider of the issuer in certain circumstances. This relief was provided by all CSA members, except Ontario, by issuing blanket orders effective June 30, 2016 (the **Blanket Order Relief**). In Ontario, the relief was provided through an Ontario-only amendment that came into force on July 29, 2016.

We understood that there continued to be difficulties in respect of the certification, creating unintended complications in respect of access by Canadian institutional investors to foreign investment opportunities. On September 29, 2016, CSA staff re-issued CSA Staff Notice 45-308 (Revised) *Guidance for Preparing and Filing Reports of Exempt Distribution under National Instrument 45-106 Prospectus Exemptions* to alleviate certain of the concerns raised regarding certification and other matters. The Proposed Amendments are intended to further address these concerns.

¹ In Ontario, the Report was amended on July 29, 2016 as further described in this section of the notice.

Summary of the Proposed Amendments

The key Proposed Amendments together with an explanation of the rationale for each change are summarized below.

Certification

Item 10 of the Report requires that a director or officer of the issuer or underwriter certify that he or she has read and understood the Report and all of the information provided in the Report is true.

We propose to amend the certification to:

- clarify that the individual certifying the Report is doing so on behalf of the issuer or underwriter,
- require the individual to certify that the information provided in the Report is “true and, to the extent required, complete”,
- include a knowledge qualifier,
- permit authorized agents to sign the certification, and
- remove the bold all-caps statement that it is an offence to make a misrepresentation and replace it with a reminder of the obligation to file the Report.

Annex B to this notice includes a blackline of Item 10 indicating the proposed changes and the rationale for each change.

Information Requirements

The table below describes the Proposed Amendments relating to certain information requirements in the Report.

Information Requirement	Proposed Changes
Item 5 – Issuer Information & Item 6 – Investment Fund Issuer Information	
Item 5g) Public listing status and Item 6e) Public listing status of the investment fund	<p>The Report requires filers to provide the names of all exchanges on which the issuer’s securities are listed.</p> <p>We propose to amend each of these Items so that filers are only required to provide the name of the exchange on which the issuer’s securities primarily trade. Filers will still only need to include the name of an exchange for which the issuer has applied for and received a listing.</p> <p>We believe this amendment will reduce the burden on filers completing the Report for issuers with securities</p>

	listed on multiple exchanges globally, while still providing information that is relevant for our analysis of exempt market activity.
Item 9 – Directors, Executive Officers and Promoters of the Issuer	
Issuer exemption category	<p>The Report contains an exemption from the information requirement of this Item for five categories of issuers and requires filers to consider and indicate whether each of the exemption categories is applicable to the issuer.</p> <p>We propose to amend this Item so that filers are only required to indicate one of the applicable exemption categories.</p> <p>We believe this amendment will reduce the burden on filers by limiting the time and analysis necessary to determine whether an exemption from information required by the Item is available.</p>
Schedule 1 – Purchaser Information	
Details of exemption relied on if relying on section 2.3 [<i>Accredited investor</i>] of NI 45-106²	<p>Schedule 1 to the Report requires filers to provide the paragraph number in the definition of "accredited investor" in section 1.1 of NI 45-106 that applies to the purchaser.</p> <p>We propose to amend Schedule 1 to allow issuers distributing securities to non-individual permitted clients to indicate this without having to specify the applicable paragraph number in the definition of "accredited investor" in section 1.1 of NI 45-106.</p> <p>We believe this amendment will reduce the burden on filers completing Schedule 1, particularly in circumstances where an issuer is distributing eligible foreign securities only to permitted clients, while still providing information about individual purchasers that will assist in our compliance programs and future policy work.</p>

² In Ontario, the accredited investor exemption is set out under subsection 73.3(2) of the *Securities Act* (Ontario).

Other Amendments

The Proposed Amendments also include other minor amendments that:

- reflect changes to how the Bank of Canada publishes foreign exchange rate data,
- reflect the Blanket Order Relief, except in Ontario where the relief has already been adopted,
- clarify certain instructions, and
- update the contact information of the securities regulatory authority or regulator in each local jurisdiction.

We have also included an amendment to the exemption section of NI 45-106 which clarifies the exemption granting authority in Alberta.

Local Matters

Annex D includes, where applicable, additional information that is relevant in a local jurisdiction only.

Request for Comments

We welcome your comments on the Proposed Amendments.

Please submit your comments in writing on or before September 6, 2017. If you are not sending your comments by email, please send a CD containing the submissions (in Microsoft Word format).

Address your submission to the CSA as follows:

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

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

The Secretary
Ontario Securities Commission
20 Queen Street West
22nd Floor
Toronto, Ontario M5H 3S8
Fax: 416-593-2318
comments@osc.gov.on.ca

Me Anne-Marie Beaudoin
Corporate Secretary
Autorité des marchés financiers
800, rue du Square-Victoria, 22^e étage
C.P. 246, tour de la Bourse
Montréal, Québec H4Z 1G3
Fax: 514-864-6381
consultation-en-cours@lautorite.qc.ca

We cannot keep submissions confidential because securities legislation in certain provinces requires publication of a summary of the written comments received during the comment period. Please note that comments received will be made publicly available and posted on websites of the Alberta Securities Commission at www.albertasecurities.com, the Ontario Securities Commission at www.osc.gov.on.ca and the Autorité des marchés financiers at www.lautorite.qc.ca, and may be posted on the websites of certain other securities regulatory authorities. You should not include personal information directly in the comments to be published. It is important that you state on whose behalf you are making the submission.

Content of Annexes

This notice contains the following annexes:

Annex A – Proposed amendments to National Instrument 45-106 *Prospectus Exemptions*

Annex B – Proposed amendments to Item 10 – Certification of Form 45-106F1 *Report of Exempt Distribution*

Annex C – Blackline of amended Form 45-106F1 *Report of Exempt Distribution* reflecting the proposed amendments

Annex D – Local matters

Questions

Please refer your questions to any of the following:

Jo-Anne Matear

Manager, Corporate Finance Branch
Ontario Securities Commission
416-593-2323
jmatear@osc.gov.on.ca

Yan Kiu Chan

Legal Counsel, Corporate Finance Branch
Ontario Securities Commission
416-204-8971
ychan@osc.gov.on.ca

Frederick Gerra

Legal Counsel, Investment Funds and Structured
Products
Ontario Securities Commission
416-204-4956
fgerra@osc.gov.on.ca

Jessie Gill

Legal Counsel, Corporate Finance
Alberta Securities Commission
403-355-6294
jessie.gill@asc.ca

Tony Herdzik

Deputy Director, Corporate Finance
Financial and Consumer Affairs Authority of
Saskatchewan
306-787-5849
tony.herdzik@gov.sk.ca

Valérie Dufour

Senior Analyst, Corporate Finance
Autorité des marchés financiers
514-395-0337 ext: 4389
valerie.dufour@lautorite.qc.ca

Jack Jiang

Securities Analyst, Corporate Finance
Nova Scotia Securities Commission
902-424-7059
jack.jiang@novascotia.ca

David Mendicino

Senior Legal Counsel, Corporate Finance Branch
Ontario Securities Commission
416-263-3795
dmendicino@osc.gov.on.ca

Kevin Yang

Senior Research Analyst, Strategy and Operations
Ontario Securities Commission
416-204-8983
kyang@osc.gov.on.ca

Gloria Tsang

Legal Counsel, Compliance and Registrant
Regulation Branch
Ontario Securities Commission
416-593-8263
gtsang@osc.gov.on.ca

Steven Weimer

Team Lead, Compliance, Data & Risk
Alberta Securities Commission
403-355-9035
steven.weimer@asc.ca

Wayne Bridgeman

Deputy Director, Corporate Finance
Manitoba Securities Commission
204-945-4905
wayne.bridgeman@gov.mb.ca

Ella-Jane Loomis

Senior Legal Counsel, Securities
Financial and Consumer Services Commission
(New Brunswick)
506-658-2602
ella-jane.loomis@fcnb.ca

John O'Brien

Superintendent of Securities
Office of the Superintendent of Securities
Government of Newfoundland and Labrador
709-729-4909
JohnOBrien@gov.nl.ca

Steven D. Dowling

Acting Director
Consumer, Labour and Financial Services Division
Department of Justice and Public Safety
Government of Prince Edward Island
902-368-4551
sddowling@gov.pe.ca

Thomas W. Hall

Superintendent of Securities
Department of Justice
Government of the Northwest Territories
867-767-9305
tom_hall@gov.nt.ca

Rhonda Horte

Securities Officer
Office of the Yukon Superintendent of Securities
Government of Yukon
867-667-5466
rhonda.horte@gov.yk.ca

Jeff Mason

Superintendent of Securities
Department of Justice
Government of Nunavut
867-975-6591
jmason@gov.nu.ca

ANNEX A

**PROPOSED AMENDMENTS TO
NATIONAL INSTRUMENT 45-106
PROSPECTUS EXEMPTIONS**

1. *National Instrument 45-106 Prospectus Exemptions is amended by this Instrument.*
2. *Subsection 7.1(3) is amended by adding “Alberta and” before “Ontario”.*
3. *Form 45-106F1 Report of Exempt Distribution is amended*

(a) in section 9, under the heading “A. General Instructions”:

(i) by deleting “noon” wherever it occurs,

(ii) by replacing “recent closing” with “recent daily”, and

(iii) by deleting “If the Bank of Canada no longer publishes a daily noon exchange rate and closing exchange rate, convert foreign currency using the daily single indicative exchange rate of the Bank of Canada in the same manner described in each of the three scenarios above.”;

(b) by adding the following under the heading “B. Terms used in the form” before “permitted client”:

“NRD” means National Registration Database;;

(c) by replacing the portion of the form that follows the text under the heading “B. Terms used in the form” and precedes Item 5 of the form with the following:

Form 45-106F1 Report of Exempt Distribution

ITEM 1 – REPORT TYPE

- ☐ New report
- ☐ Amended report If amended, provide filing date of report that is being amended. (YYYY-MM-DD)

ITEM 2 – PARTY CERTIFYING THE REPORT

Indicate the party certifying the report (select only one). For guidance regarding whether an issuer is an investment fund, refer to section 1.1 of National Instrument 81-106 Investment Fund Continuous Disclosure and the companion policy to NI 81-106.

- ☐ Investment fund issuer
- ☐ Issuer (other than an investment fund)
- ☐ Underwriter

ITEM 3 – ISSUER NAME AND OTHER IDENTIFIERS

Provide the following information about the issuer, or if the issuer is an investment fund, about the fund.

Full legal name

Previous full legal name

If the issuer's name changed in the last 12 months, provide most recent previous legal name.

Website (if applicable)

If the issuer has a legal entity identifier, provide below. Refer to Part B of the Instructions for the definition of "legal entity identifier".

Legal entity identifier

ITEM 4 – UNDERWRITER INFORMATION

If an underwriter is completing the report, provide the underwriter's full legal name and firm NRD number.

Full legal name

Firm NRD number (if applicable)

If the underwriter does not have a firm NRD number, provide the head office contact information of the underwriter.

Street address

Municipality

Province/State

Country

Postal code/Zip code

Telephone number

Website (if applicable)

- (d) **in Item 5(a), by deleting** “For more information on finding NAICS industry code go to Statistics Canada’s NAICS industry search tool.”;
- (e) **in Item 5(g), by replacing** “If the issuer is publicly listed, provide the names of all exchanges on which its securities are listed. Include only the names of exchanges for which the issuer has applied for and received a listing, which excludes, for example, automated trading systems.” **with** “If the issuer is publicly listed, provide the name of the exchange on which the issuer’s securities primarily trade. Only provide the name of an exchange and not a trading facility such as, for example, an automated trading system.”;
- (f) **in Item 5(g), by replacing** “Exchange names” **with** “Exchange name”;
- (g) **in Item 6(e), by replacing** “If the investment fund is publicly listed, provide the names of all exchanges on which its securities are listed. Include only the names of exchanges for which the investment fund has applied for and received a listing, which excludes, for example, automated trading systems.” **with** “If the investment fund is publicly listed, provide the name of the exchange on which the investment fund’s securities primarily trade. Only provide the name of an exchange and not a trading facility such as, for example, an automated trading system.”;
- (h) **in Item 6(e), by replacing** “Exchange names” **with** “Exchange name”;
- (i) **in Item 7, by adding** “in connection with the distribution” **after** “or finder’s fees”;
- (j) **in Item 7, by replacing** “should” **with** “must”;
- (k) **in Item 7(e), by replacing** “Security code” **with** “Convertible/exchangeable security code”;
- (l) **in Item 9, by replacing** “(select all that apply)” **with** “(Select the one that applies - if more than one applies, select only one.)”;
- (m) **in Item 9, by adding** “only” **before** “eligible foreign securities”;
- (n) **by replacing Item 10 with the following:**

ITEM 10 – CERTIFICATION

Provide the following certification and business contact information of an officer, director or agent of the issuer or underwriter. If the issuer or underwriter is not a company, an individual who performs functions similar to that of a director or officer may certify the report. For example, if the issuer is a trust, the report may be certified by the issuer's trustee. If the issuer is an investment fund, a director or officer of the investment fund manager (or, if the investment fund manager is not a company, an individual who performs similar functions) may certify the report if the director or officer has been authorized to do so by the investment fund.

The certification may be delegated, but only to an agent that has been authorized by an officer or director of the issuer or underwriter to prepare and certify the report on behalf of the issuer or underwriter.

If the individual completing and filing the report is different from the individual certifying the report, provide his or her name and contact details in Item 11.

The signature on the report must be in typed form rather than handwritten form. The report may include an electronic signature provided the name of the signatory is also in typed form.

Securities legislation requires an issuer or underwriter that makes a distribution of securities under certain prospectus exemptions to file a completed report of exempt distribution.

By completing the information below, I certify, on behalf of the issuer/underwriter/investment fund manager, to the securities regulatory authority or regulator, as applicable, that I have reviewed this report and to my knowledge, having exercised reasonable diligence, the information provided in this report is true and, to the extent required, complete.

Name of issuer/underwriter/ investment fund manager/agent			
Full legal name			
	Family name	First given name	Secondary given names
Title			
Telephone number		Email address	
Signature		Date	
		YYYY	MM DD

(o) in paragraph e)2. of Schedule 1, by replacing “(select only one)” with “(Select only one – if the purchaser is a permitted client that is not an individual, “NIPC” can be selected instead of the paragraph number.)”;

(p) except in Ontario, in Schedule 1, by adding the following below the heading “f) Other information” and before “1. Is the purchaser a registrant? (Y/N)”:

Paragraphs f)1. and f)2. do not apply if one or more of the following apply:

- (a) the issuer is a foreign public issuer;*
- (b) the issuer is a wholly owned subsidiary of a foreign public issuer;*
- (c) the issuer is distributing only eligible foreign securities only to permitted clients.;*

(q) in Ontario, in paragraph f) of Schedule 1, by replacing “In Ontario, clauses” with “Paragraphs”;

(r) *in Ontario, in paragraph f) of Schedule 1, by adding “only” before “eligible foreign securities”;*

(s) *by deleting paragraph f)3. of Schedule 1 and replacing it with the following:*

3. Full legal name of any person compensated for the distribution to the purchaser. *If a person compensated is a registered firm, provide the firm NRD number only. (Note: the names must be consistent with the names of the persons compensated as provided in Item 8.);and*

(t) *by replacing the portion of the Form after the heading “Questions:” with the following:*

Refer any questions to:

Alberta Securities Commission

Suite 600, 250 – 5th Street SW

Calgary, Alberta T2P 0R4

Telephone: 403-297-6454

Toll free in Canada: 1-877-355-0585

Facsimile: 403-297-2082

Public official contact regarding indirect collection of information: FOIP Coordinator

British Columbia Securities Commission

P.O. Box 10142, Pacific Centre

701 West Georgia Street

Vancouver, British Columbia V7Y 1L2

Inquiries: 604-899-6854

Toll free in Canada: 1-800-373-6393

Facsimile: 604-899-6581

Email: FOI-privacy@bcsc.bc.ca

Public official contact regarding indirect collection of information: FOI Inquiries

The Manitoba Securities Commission

500 – 400 St. Mary Avenue

Winnipeg, Manitoba R3C 4K5

Telephone: 204-945-2561

Toll free in Manitoba: 1-800-655-5244

Facsimile: 204-945-0330

Public official contact regarding indirect collection of information: Director

Financial and Consumer Services Commission (New Brunswick)

85 Charlotte Street, Suite 300

Saint John, New Brunswick E2L 2J2

Telephone: 506-658-3060

Toll free in Canada: 1-866-933-2222

Facsimile: 506-658-3059

Email: info@fcnb.ca

Public official contact regarding indirect collection of information: Chief Executive Officer and Privacy Officer

Government of Newfoundland and Labrador

Financial Services Regulation Division

P.O. Box 8700

Confederation Building

2nd Floor, West Block

Prince Philip Drive

St. John's, Newfoundland and Labrador A1B 4J6

Attention: Director of Securities

Telephone: 709-729-4189

Facsimile: 709-729-6187

Public official contact regarding indirect collection of information: Superintendent of Securities

Government of the Northwest Territories

Office of the Superintendent of Securities

P.O. Box 1320

Yellowknife, Northwest Territories X1A 2L9

Telephone: 867-767-9305

Facsimile: 867-873-0243

Public official contact regarding indirect collection of information: Superintendent of Securities

Nova Scotia Securities Commission

Suite 400, 5251 Duke Street

Duke Tower

P.O. Box 458

Halifax, Nova Scotia B3J 2P8

Telephone: 902-424-7768

Facsimile: 902-424-4625

Public official contact regarding indirect collection of information: Executive Director

Government of Nunavut

Department of Justice

Legal Registries Division

P.O. Box 1000, Station 570

1st Floor, Brown Building

Iqaluit, Nunavut X0A 0H0

Telephone: 867-975-6590

Facsimile: 867-975-6594

Public official contact regarding indirect collection of information: Superintendent of Securities

Ontario Securities Commission

20 Queen Street West, 22nd Floor

Toronto, Ontario M5H 3S8

Telephone: 416-593- 8314

Toll free in Canada: 1-877-785-1555

Facsimile: 416-593-8122

Email: exemptmarketfilings@osc.gov.on.ca

Public official contact regarding indirect collection of information: Inquiries Officer

Prince Edward Island Securities Office

95 Rochford Street, 4th Floor Shaw Building

P.O. Box 2000

Charlottetown, Prince Edward Island C1A 7N8

Telephone: 902-368-4569

Facsimile: 902-368-5283

Public official contact regarding indirect collection of information: Superintendent of Securities

Autorité des marchés financiers

800, rue du Square-Victoria, 22^e étage

C.P. 246, tour de la Bourse

Montréal, Québec H4Z 1G3

Telephone: 514-395-0337 or 1-877-525-0337

Facsimile: 514-873-6155 (For filing purposes only)

Facsimile: 514-864-6381 (For privacy requests only)

Email: financementdassocies@lautorite.qc.ca (For corporate finance issuers);

fonds_dinvestissement@lautorite.qc.ca (For investment fund issuers)

Public official contact regarding indirect collection of information: Corporate Secretary

Financial and Consumer Affairs Authority of Saskatchewan

Suite 601 - 1919 Saskatchewan Drive

Regina, Saskatchewan S4P 4H2

Telephone: 306-787-5842

Facsimile: 306-787-5899

Public official contact regarding indirect collection of information: Director

Office of the Superintendent of Securities

Government of Yukon

Department of Community Services

307 Black Street, 1st Floor

P.O. Box 2703, C-6

Whitehorse, Yukon Y1A 2C6

Telephone: 867-667-5466

Facsimile: 867-393-6251

Email: securities@gov.yk.ca

Public official contact regarding indirect collection of information: Superintendent of Securities.

4. This Instrument comes into force on ●.

ANNEX B

Proposed amendments to Item 10 – Certification of Form 45-106F1 *Report of Exempt Distribution*

Permitting authorized agents to sign

- This addresses the practical reality that law firms and other filing agents often prepare and file the report.

Revising what is being certified to “true and, to the extent required, complete”

- This provides a more fulsome certification standard while addressing concerns with certifying completeness when: 1) not all parts of the report are applicable, and 2) in some cases, filers can only select one option when multiple options may apply and there is limited ability to include additional notes in the report.

ITEM 10 – CERTIFICATION																																			
<p>Provide the following certification and business contact information of an officer-or, director, <u>or agent</u> of the issuer or underwriter. If the issuer or underwriter is not a company, an individual who performs functions similar to that of a director or officer may certify the report. For example, if the issuer is a trust, the report may be certified by the issuer's trustee. If the issuer is an investment fund, a director or officer of the investment fund manager (or, if the investment fund manager is not a company, an individual who performs similar functions) may certify the report if the director or officer has been authorized to do so by the investment fund.</p> <p>The certification may not be delegated, <u>but only</u> to an agent or other individual preparing <u>that has been authorized by an officer or director of the issuer or underwriter to prepare and certify</u> the report on behalf of the issuer or underwriter.</p> <p>If the individual completing and filing the report is different from the individual certifying the report, provide their <u>his or her</u> name and contact details in Item 11.</p> <p>The signature on the report must be in typed form rather than handwritten form. The report may include an electronic signature provided the name of the signatory is also in typed form.</p>																																			
<p>IT IS AN OFFENCE TO MAKE A MISREPRESENTATION IN THIS REPORT</p> <p><u>Securities legislation requires an issuer or underwriter that makes a distribution of securities under certain prospectus exemptions, to file a completed report of exempt distribution.</u></p> <p>By completing the information below, I certify, <u>on behalf of the issuer/underwriter/investment fund manager,</u> to the securities regulatory authority or regulator that, as applicable, that I have reviewed this report and to my knowledge, having exercised reasonable diligence, the information provided in this report is true and, to the extent required, complete.</p> <ul style="list-style-type: none"> I have read and understand this report; and all of the information provided in this report is true. 																																			
<table border="1"> <tr> <td colspan="4">Name of issuer/underwriter/ investment fund manager/agent</td> </tr> <tr> <td colspan="2">Full legal name</td> <td colspan="2"></td> </tr> <tr> <td>Family name</td> <td>First given name</td> <td colspan="2">Secondary given names</td> </tr> <tr> <td colspan="4">Title</td> </tr> <tr> <td colspan="2">Name of issuer/underwriter/ investment fund manager</td> <td colspan="2"></td> </tr> <tr> <td>Telephone number</td> <td colspan="3">Email address</td> </tr> <tr> <td>Signature</td> <td>Date</td> <td colspan="2"></td> </tr> <tr> <td></td> <td>YYYY</td> <td>MM</td> <td>DD</td> </tr> </table>				Name of issuer/underwriter/ investment fund manager/agent				Full legal name				Family name	First given name	Secondary given names		Title				Name of issuer/underwriter/ investment fund manager				Telephone number	Email address			Signature	Date				YYYY	MM	DD
Name of issuer/underwriter/ investment fund manager/agent																																			
Full legal name																																			
Family name	First given name	Secondary given names																																	
Title																																			
Name of issuer/underwriter/ investment fund manager																																			
Telephone number	Email address																																		
Signature	Date																																		
	YYYY	MM	DD																																

Adopting a corporate-style signature block, such that the name of the issuer/underwriter/investment fund manager/agent appears first and, below that, the name of the person signing

- This clarifies that in signing the certification, the individual certifying the report is doing so on behalf of the issuer/underwriter/investment fund manager/agent.

Replacing the statement “IT IS AN OFFENCE TO MAKE A MISREPRESENTATION IN THIS REPORT” with a new statement that provides a reminder of the obligation to file the report

- The new statement is intended to serve as a “pause and reminder” to the individual certifying the report of the obligation to file a completed report, thereby deterring misleading and untrue statements and enhancing the integrity of the data collected through the report.

Including a knowledge qualifier

- This is intended to address stakeholder concerns that the certification does not have a knowledge qualifier, as found in the certification in several other CSA forms, and to acknowledge the due diligence defence in securities legislation.

ANNEX C

**Blackline of amended Form 45-106F1 *Report of Exempt Distribution*
Reflecting the Proposed Amendments**

This is a blackline showing proposed amendments to Form 45-106F1 against the version that was adopted by the CSA on June 30, 2016.

The existing Ontario version of the Form differs from the June 30, 2016 CSA version, as the substance of the new italicized text immediately before the questions in paragraph f) of Schedule 1 of the Form was added by way of an Ontario-only amendment that came into force on July 29, 2016.

Form 45-106F1 *Report of Exempt Distribution*

A. General Instructions

1. Filing instructions

An issuer or underwriter that is required to file a report of exempt distribution and pay the applicable fee must file the report and pay the fee as follows:

- **In British Columbia** – through BCSC eServices at <http://www.bccsc.bc.ca>.
- **In Ontario** – through the online e-form available at <http://www.osc.gov.on.ca>.
- **In all other jurisdictions** – through the System for Electronic Document Analysis and Retrieval (SEDAR) in accordance with National Instrument 13-101 *System for Electronic Document Analysis and Retrieval (SEDAR)* if required, or otherwise with the securities regulatory authority or regulator, as applicable, in the applicable jurisdictions at the addresses listed at the end of this form.

The issuer or underwriter must file the report in a jurisdiction of Canada if the distribution occurs in the jurisdiction. If a distribution is made in more than one jurisdiction of Canada, the issuer or underwriter may satisfy its obligation to file the report by completing a single report identifying all purchasers, and file the report in each jurisdiction of Canada in which the distribution occurs. Filing fees payable in a particular jurisdiction are not affected by identifying all purchasers in a single report.

In order to determine the applicable fee in a particular jurisdiction of Canada, consult the securities legislation of that jurisdiction.

2. Issuers located outside of Canada

If an issuer located outside of Canada determines that a distribution has taken place in a jurisdiction of Canada, include information about purchasers resident in that jurisdiction only.

3. Multiple distributions

An issuer may use one report for multiple distributions occurring within 10 days of each other, provided the report is filed on or before the 10th day following the first distribution date. However, an investment fund issuer that is relying on the exemptions set out in subsection 6.2(2) of NI 45-106 may file the report annually in accordance with that subsection.

4. References to purchaser

References to a purchaser in this form are to the beneficial owner of the securities.

However, if a trust company, trust corporation, or registered adviser described in paragraph (p) or (q) of the definition of “accredited investor” in section 1.1 of NI 45-106 has purchased the securities on behalf of a fully managed account, provide information about the trust company, trust corporation or registered adviser only; do not include information about the beneficial owner of the fully managed account.

5. References to issuer

References to “issuer” in this form include an investment fund issuer and a non-investment fund issuer, unless otherwise specified.

6. Investment fund issuers

If the issuer is an investment fund, complete Items 1-3, 6-8, 10, 11 and Schedule 1 of this form.

7. Mortgage investment entities

If the issuer is a mortgage investment entity, complete all applicable items of this form other than Item 6.

8. Language

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

9. Currency

All dollar amounts in the report must be in Canadian dollars. If the distribution was made or any compensation was paid in connection with the distribution in a foreign currency, convert the currency to Canadian dollars using the daily ~~noon~~ exchange rate of the Bank of Canada on the distribution date. If the distribution date occurs on a date when the daily ~~noon~~ exchange rate of the Bank of Canada is not available, convert the currency to Canadian dollars using the most recent ~~closing~~ daily exchange rate of the Bank of Canada available before the distribution date. For investment funds in continuous distribution, convert the currency to Canadian dollars using the average daily ~~noon~~ exchange rate of the Bank of Canada for the distribution period covered by the report.

~~If the Bank of Canada no longer publishes a daily noon exchange rate and closing exchange rate, convert foreign currency using the daily single indicative exchange rate of the Bank of Canada in the same manner described in each of the three scenarios above.~~

If the distribution was not made in Canadian dollars, provide the foreign currency in Item 7(a) of the report.

10. Date of information in report

Unless otherwise indicated in this form, provide the information as of the distribution end date.

11. Date of formation

For the date of formation, provide the date on which the issuer was incorporated, continued or organized (formed). If the issuer resulted from an amalgamation, arrangement, merger or reorganization, provide the date of the most recent amalgamation, arrangement, merger or reorganization.

12. Security codes

Wherever this form requires disclosure of the type of security, use the following security codes:

Security code	Security type
BND	Bonds
CER	Certificates <i>(including pass-through certificates, trust certificates)</i>
CMS	Common shares
CVD	Convertible debentures
CVN	Convertible notes
CVP	Convertible preferred shares
DEB	Debentures
FTS	Flow-through shares
FTU	Flow-through units
LPU	Limited partnership units
NOT	Notes <i>(include all types of notes except convertible notes)</i>
OPT	Options
PRS	Preferred shares
RTS	Rights
UBS	Units of bundled securities <i>(such as a unit consisting of a common share and a warrant)</i>
UNT	Units <i>(exclude units of bundled securities, include trust units and mutual fund units)</i>
WNT	Warrants
OTH	Other securities not included above <i>(if selected, provide details of security type in Item 7d)</i>

B. Terms used in the form

1. For the purposes of this form:

“designated foreign jurisdiction” means Australia, France, Germany, Hong Kong, Italy, Japan, Mexico, the Netherlands, New Zealand, Singapore, South Africa, Spain, Sweden, Switzerland or the United Kingdom of Great Britain and Northern Ireland;

“eligible foreign security” means a security offered primarily in a foreign jurisdiction as part of a distribution of securities in either of the following circumstances:

- (a) the security is issued by an issuer
 - (i) that is incorporated, formed or created under the laws of a foreign jurisdiction,
 - (ii) that is not a reporting issuer in a jurisdiction of Canada,
 - (iii) that has its head office outside of Canada, and
 - (iv) that has a majority of the executive officers and a majority of the directors ordinarily resident outside of Canada;
- (b) the security is issued or guaranteed by the government of a foreign jurisdiction;

“foreign public issuer” means an issuer where any of the following apply:

- (a) the issuer has a class of securities registered under section 12 of the 1934 Act;
- (b) the issuer is required to file reports under section 15(d) of the 1934 Act;
- (c) the issuer is required to provide disclosure relating to the issuer and the trading in its securities to the public, to security holders of the issuer or to a regulatory authority and that disclosure is publicly available in a designated foreign jurisdiction;

“legal entity identifier” means a unique identification code assigned to the person

- (a) in accordance with the standards set by the Global Legal Entity Identifier System, or

- (b) that complies with the standards established by the Legal Entity Identifier Regulatory Oversight Committee for pre-legal entity identifiers;

[“NRD” means National Registration Database;](#)

“permitted client” has the same meaning as in National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*;

“SEDAR profile” means a filer profile required under section 5.1 of National Instrument 13-101 *System for Electronic Document Analysis and Retrieval (SEDAR)*.

2. For the purposes of this form, a person is connected with an issuer or an investment fund manager if either of the following applies:
 - (a) one of them is controlled by the other;
 - (b) each of them is controlled by the same person.

Form 45-106F1 Report of Exempt Distribution

IT IS AN OFFENCE TO MAKE A MISREPRESENTATION IN THIS REPORT

ITEM 1 – REPORT TYPE

☐ New report

☐ Amended report If amended, provide filing date of report that is being amended. (YYYY-MM-DD)

ITEM 2 – PARTY CERTIFYING THE REPORT

Indicate the party certifying the report (select only one). For guidance regarding whether an issuer is an investment fund, refer to section 1.1 of National Instrument 81-106 Investment Fund Continuous Disclosure and the companion policy to NI 81-106.

☐ Investment fund issuer

☐ Issuer (other than an investment fund)

☐ Underwriter

ITEM 3 – ISSUER NAME AND OTHER IDENTIFIERS

Provide the following information about the issuer, or if the issuer is an investment fund, about the fund.

Full legal name

Previous full legal name

If the issuer's name changed in the last 12 months, provide most recent previous legal name.

Website (if applicable)

If the issuer has a legal entity identifier, provide below. Refer to Part B of the Instructions for the definition of "legal entity identifier".

Legal entity identifier

ITEM 4 – UNDERWRITER INFORMATION

If an underwriter is completing the report, provide the underwriter's full legal name and firm ~~National Registration Database (NRD)~~ [NRD](#) number.

Full legal name

Firm NRD number (if applicable)

If the underwriter does not have a firm NRD number, provide the head office contact information of the underwriter.

Street address

Municipality

Province/State

Country

Postal code/Zip code

^{#5351127} Telephone number

Website (if applicable)

INCLUDES COMMENT LETTERS

ITEM 5 – ISSUER INFORMATION

If the issuer is an investment fund, do not complete Item 5. Proceed to Item 6.

a) Primary industry

Provide the issuer's North American Industry Classification Standard (NAICS) code (6 digits only) that corresponds to the issuer's primary business activity. *For more information on finding the NAICS industry code go to [Statistics Canada's NAICS industry search tool](#).*

NAICS industry code

If the issuer is in the **mining industry**, indicate the stage of operations. This does not apply to issuers that provide services to issuers operating in the mining industry. Select the category that best describes the issuer's stage of operations.

☐ Exploration ☐ Development ☐ Production

Is the issuer's primary business to invest all or substantially all of its assets in any of the following? If yes, select all that apply.

☐ Mortgages ☐ Real estate ☐ Commercial/business debt ☐ Consumer debt ☐ Private companies

b) Number of employees

Number of employees: ☐ 0 – 49 ☐ 50 – 99 ☐ 100 – 499 ☐ 500 or more

c) SEDAR profile number

Does the issuer have a [SEDAR](#) profile?

☐ No ☐ Yes If yes, provide SEDAR profile number

If the issuer does not have a SEDAR profile complete Item 5(d) – (h).

d) Head office address

Street address Province/State

Municipality Postal code/Zip code

Country Telephone number

e) Date of formation and financial year-end

Date of formation Financial year-end
 YYYY MM DD MM DD

f) Reporting issuer status

Is the issuer a reporting issuer in any jurisdiction of Canada? ☐ No ☐ Yes

If yes, select the jurisdictions of Canada in which the issuer is a reporting issuer.

☐ All ☐ AB ☐ BC ☐ MB ☐ NB ☐ NL ☐ NT
☐ NS ☐ NU ☐ ON ☐ PE ☐ QC ☐ SK ☐ YT

g) Public listing status

If the issuer has a CUSIP number, provide below (first 6 digits only)

CUSIP number

If the issuer is publicly listed, provide the [name](#) of [all exchanges](#) the exchange on which [its securities](#) are listed. Include only the names of exchanges for which the issuer has applied for and received a listing, which excludes [primarily trade](#). Only provide the name of an exchange and not a trading facility such as, for example, [an automated trading system](#).

#53511 Exchange [name](#)

h) Size of issuer's assets

Select the size of the issuer's assets for its most recent financial year-end (Canadian \$). If the issuer has not existed for a full financial year, provide the size of the issuer's assets at the distribution end date.

- ☐ \$0 to under \$5M
 ☐ \$5M to under \$25M
 ☐ \$25M to under \$100M
☐ \$100M to under \$500M
 ☐ \$500M to under \$1B
 ☐ \$1B or over

ITEM 6 – INVESTMENT FUND ISSUER INFORMATION

If the issuer is an investment fund, provide the following information.

a) Investment fund manager information

Full legal name

Firm NRD Number (if applicable)

If the investment fund manager does not have a firm NRD number, provide the head office contact information of the investment fund manager.

Street Address

Municipality

Province/State

Country

Postal code/Zip code

Telephone number

Website (if applicable)

b) Type of investment fund

Type of investment fund that most accurately identifies the issuer (select only one).

- ☐ Money market
 ☐ Equity
 ☐ Fixed income
☐ Balanced
 ☐ Alternative strategies
 ☐ Other (describe)

Indicate whether one or both of the following apply to the investment fund.

☐ Invests primarily in other investment fund issuers

☐ Is a UCITs Fund¹

¹ Undertaking for the Collective Investment of Transferable Securities funds (UCITs Funds) are investment funds regulated by the European Union (EU) directives that allow collective investment schemes to operate throughout the EU on a passport basis on authorization from one member state.

c) Date of formation and financial year-end of the investment fund

Date of formation
 YYYY MM DD

Financial year-end
 MM DD

d) Reporting issuer status of the investment fund

Is the investment fund a reporting issuer in any jurisdiction of Canada? ☐ No ☐ Yes

If yes, select the jurisdictions of Canada in which the investment fund is a reporting issuer.

☐ All
 ☐ AB
 ☐ BC
 ☐ MB
 ☐ NB
 ☐ NL
 ☐ NT

☐ NS
 ☐ NU
 ☐ ON
 ☐ PE
 ☐ QC
 ☐ SK
 ☐ YT

e) Public listing status of the investment fund

If the investment fund has a CUSIP number, provide below (first 6 digits only).

CUSIP number

If the investment fund is publicly listed, provide the ~~names~~name of ~~all exchanges~~the exchange on which ~~its~~the investment fund's securities ~~are listed~~. ~~Include only the names of exchanges for which the investment fund has applied for and received a listing, which excludes primarily trade. Only provide the name of an exchange and not a trading facility such as,~~ for example, an automated trading ~~system~~system.

Exchange ~~names~~name

f) Net asset value (NAV) of the investment fund

Select the NAV range of the investment fund as of the date of the most recent NAV calculation (Canadian \$).

- ☐ \$0 to under \$5M ☐ \$5M to under \$25M ☐ \$25M to under \$100M
☐ \$100M to under \$500M ☐ \$500M to under \$1B ☐ \$1B or over

Date of NAV calculation: YYYY MM DD

ITEM 7 – INFORMATION ABOUT THE DISTRIBUTION

If an issuer located outside of Canada completes a distribution in a jurisdiction of Canada, include in Item 7 and Schedule 1 information about purchasers resident in that jurisdiction of Canada only. Do not include in Item 7 securities issued as payment of commissions or finder's fees in connection with the distribution, which ~~should~~must be disclosed in Item 8. The information provided in Item 7 must reconcile with the information provided in Schedule 1 of the report.

a) Currency

Select the currency or currencies in which the distribution was made. All dollar amounts provided in the report must be in Canadian dollars.

☐ Canadian dollar ☐ US dollar ☐ Euro Other (describe)

b) Distribution date(s)

State the distribution start and end dates. If the report is being filed for securities distributed on only one distribution date, provide the distribution date as both the start and end dates. If the report is being filed for securities distributed on a continuous basis, include the start and end dates for the distribution period covered by the report.

Start date
YYYY MM DD

End date
YYYY MM DD

c) Detailed purchaser information

Complete Schedule 1 of this form for each purchaser and attach the schedule to the completed report.

d) Types of securities distributed

Provide the following information for all distributions that take place in a jurisdiction of Canada on a per security basis. Refer to Part A of the Instructions for how to indicate the security code. If providing the CUSIP number, indicate the full 9-digit CUSIP number assigned to the security being distributed.

Security code	CUSIP number (if applicable)	Description of security	Number of securities	Canadian \$		
				Single or lowest price	Highest price	Total amount

e) Details of rights and convertible/exchangeable securities

If any rights (e.g. warrants, options) were distributed, provide the exercise price and expiry date for each right. If any convertible/exchangeable securities were distributed, provide the conversion ratio and describe any other terms for each convertible/exchangeable security.

Security Code Convertible / exchangeable security code	Underlying security code	Exercise price (Canadian \$)		Expiry date (YYYY-MM-DD)	Conversion ratio	Describe other terms (if applicable)
		Lowest	Highest			

f) Summary of the distribution by jurisdiction and exemption

State the total dollar amount of securities distributed and the number of purchasers for each jurisdiction of Canada and foreign jurisdiction where a purchaser resides and for each exemption relied on in Canada for that distribution. However, if an issuer located outside of Canada completes a distribution in a jurisdiction of Canada, include distributions to purchasers resident in that jurisdiction of Canada only.

This table requires a separate line item for: (i) each jurisdiction where a purchaser resides, (ii) each exemption relied on in the jurisdiction where a purchaser resides, if a purchaser resides in a jurisdiction of Canada, and (iii) each exemption relied on in Canada, if a purchaser resides in a foreign jurisdiction.

For jurisdictions within Canada, state the province or territory, otherwise state the country.

Province or country	Exemption relied on	Number of purchasers	Total amount (Canadian \$)
Total dollar amount of securities distributed			
Total number of unique purchasers ²			

²In calculating the total number of unique purchasers to which the issuer distributed securities, count each purchaser only once, regardless of whether the issuer distributed multiple types of securities to, and relied on multiple exemptions for, that purchaser.

g) Net proceeds to the investment fund by jurisdiction

If the issuer is an investment fund, provide the net proceeds to the investment fund for each jurisdiction of Canada and foreign jurisdiction where a purchaser resides.³ If an issuer located outside of Canada completes a distribution in a jurisdiction of Canada, include net proceeds for that jurisdiction of Canada only. For jurisdictions within Canada, state the province or territory, otherwise state the country.

Province or country	Net proceeds (Canadian \$)
Total net proceeds to the investment fund	

³"Net proceeds" means the gross proceeds realized in the jurisdiction from the distributions for which the report is being filed, less the gross redemptions that occurred during the distribution period covered by the report.

h) Offering materials - This section applies only in Saskatchewan, Ontario, Québec, New Brunswick and Nova Scotia.

If a distribution has occurred in Saskatchewan, Ontario, Québec, New Brunswick or Nova Scotia, complete the table below by listing the offering materials that are required under the prospectus exemption relied on to be filed with or delivered to the securities regulatory authority or regulator in those jurisdictions.

In Ontario, if the offering materials listed in the table are required to be filed with or delivered to the Ontario Securities Commission (OSC), attach an electronic version of the offering materials that have not been previously filed with or delivered to the OSC.

	Description	Date of document or other material (YYYY-MM-DD)	Previously filed with or delivered to regulator? (Y/N)	Date previously filed or delivered (YYYY-MM-DD)
1.				
2.				
3.				

ITEM 8 – COMPENSATION INFORMATION

Provide information for each person (as defined in NI 45-106) to whom the issuer directly provides, or will provide, any compensation in connection with the distribution. **Complete additional copies of this page if more than one person was, or will be, compensated.**

Indicate whether any compensation was paid, or will be paid, in connection with the distribution.

☐ No

☐ Yes

If yes, indicate number of persons compensated.

a) Name of person compensated and registration status

Indicate whether the person compensated is a registrant.

☐ No

☐ Yes

If the person compensated is an individual, provide the name of the individual.

Full legal name of individual

Family name	First given name	Secondary given names

If the person compensated is not an individual, provide the following information.

Full legal name of non-individual

Firm NRD number

(if applicable)

Indicate whether the person compensated facilitated the distribution through a funding portal or an internet-based portal.

☐ No

☐ Yes

b) Business contact information

If a firm NRD number is not provided in Item 8(a), provide the business contact information of the person being compensated.

Street address

Municipality

Province/State

Country

Postal code/Zip code

#5351127

Email address

Telephone number

c) Relationship to issuer or investment fund manager

Indicate the person's relationship with the issuer or investment fund manager (select all that apply). Refer to the meaning of "connected" in Part 1(2) of the Instructions and the meaning of "control" in section 1.4 of NI 45-106 for the purposes of completing this section.

- ☐ Connected with the issuer or investment fund manager
- ☐ Insider of the issuer (other than an investment fund)
- ☐ Director or officer of the investment fund or investment fund manager
- ☐ Employee of the issuer or investment fund manager
- ☐ None of the above

d) Compensation details

Provide details of all compensation paid, or to be paid, to the person identified in Item 8(a) in connection with the distribution. Provide all amounts in Canadian dollars. Include cash commissions, securities-based compensation, gifts, discounts or other compensation. Do not report payments for services incidental to the distribution, such as clerical, printing, legal or accounting services. An issuer is not required to ask for details about, or report on, internal allocation arrangements with the directors, officers or employees of a non-individual compensated by the issuer.

Cash commissions paid

Value of all securities distributed as compensation⁴

Security codes

Security code 1			Security code 2			Security code 3		
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

Describe terms of warrants, options or other rights

Other compensation⁵

Describe

Total compensation paid

☐ Check box if the person will or may receive any deferred compensation (describe the terms below)

⁴Provide the aggregate value of all securities distributed as compensation, excluding options, warrants or other rights exercisable to acquire additional securities of the issuer.

Indicate the security codes for all securities distributed as compensation, including options, warrants or other rights exercisable to acquire additional securities of the issuer.

⁵Do not include deferred compensation.

ITEM 9 – DIRECTORS, EXECUTIVE OFFICERS AND PROMOTERS OF THE ISSUER

If the issuer is an investment fund, do not complete Item 9. Proceed to Item 10.

Indicate whether the issuer is any of the following (~~select all that apply~~ Select the one that applies - if more than one applies, select only one.).

☐ Reporting issuer in any jurisdiction of Canada

☐ Foreign public issuer

☐ Wholly owned subsidiary of a reporting issuer in any jurisdiction of Canada⁶

Provide name of reporting issuer

☐ Wholly owned subsidiary of a foreign public issuer⁶

Provide name of foreign public issuer

☐ Issuer distributing only eligible foreign securities only to permitted clients⁷

If the issuer is at least one of the above, do not complete Item 9(a) – (c). Proceed to Item 10.

⁶An issuer is a wholly owned subsidiary of a reporting issuer or a foreign public issuer if all of the issuer's outstanding voting securities, other than securities that are required by law to be owned by its directors, are beneficially owned by the reporting issuer or the foreign public issuer, respectively.

⁷Check this box if it applies to the current distribution even if the issuer made previous distributions of other types of securities to non-permitted clients. Refer to the definitions of "eligible foreign security" and "permitted client" in Part B(1) of the Instructions.

☐ **If the issuer is none of the above, check this box and complete Item 9(a) – (c).**

a) Directors, executive officers and promoters of the issuer

Provide the following information for each director, executive officer and promoter of the issuer. For locations within Canada, state the province or territory, otherwise state the country. For "Relationship to issuer", "D" – Director, "O" – Executive Officer, "P" – Promoter.

Organization or company name	Family name	First given name	Secondary given names	Business location of non-individual or residential jurisdiction of individual	Relationship to issuer (select all that apply)		
				Province or country	D	O	P

b) Promoter information

If the promoter listed above is not an individual, provide the following information for each director and executive officer of the promoter. For locations within Canada, state the province or territory, otherwise state the country. For "Relationship to promoter", "D" – Director, "O" – Executive Officer.

Organization or company name	Family name	First given name	Secondary given names	Residential jurisdiction of individual	Relationship to promoter (select one or both if applicable)	
				Province or country	D	O

c) Residential address of each individual

Complete Schedule 2 of this form providing the full residential address for each individual listed in Item 9(a) and (b) and attach to the completed report. Schedule 2 also requires information to be provided about control persons.

ITEM 10 – CERTIFICATION

Provide the following certification and business contact information of an officer ~~or~~ director or agent of the issuer or underwriter. If the issuer or underwriter is not a company, an individual who performs functions similar to that of a director or officer may certify the report. For example, if the issuer is a trust, the report may be certified by the issuer's trustee. If the issuer is an investment fund, a director or officer of the investment fund manager (or, if the investment fund manager is not a company, an individual who performs similar functions) may certify the report if the director or officer has been authorized to do so by the investment fund.

The certification may ~~not~~ be delegated, but only to an agent ~~or other individual preparing~~ that has been authorized by an officer or director of the issuer or underwriter to prepare and certify the report on behalf of the issuer or underwriter.

If the individual completing and filing the report is different from the individual certifying the report, provide ~~their~~ his or her name and contact details in Item 11.

The signature on the report must be in typed form rather than handwritten form. The report may include an electronic signature provided the name of the signatory is also in typed form.

IT IS AN OFFENCE TO MAKE A MISREPRESENTATION IN THIS REPORT

Securities legislation requires an issuer or underwriter that makes a distribution of securities under certain prospectus exemptions to file a completed report of exempt distribution.

By completing the information below, I certify, on behalf of the issuer/underwriter/investment fund manager, to the securities regulatory authority or regulator ~~that~~, as applicable, that I have reviewed this report and to my knowledge, having exercised reasonable diligence, the information provided in this report is true and, to the extent required, complete.

~~• I have read and understand this report; and~~

~~• all of the information provided in this report is true.~~

Name of issuer/underwriter/
investment fund
manager/agent

Full legal name

Family name

First given name

Secondary given names

Title

~~Name of issuer/underwriter/
investment fund manager~~

Telephone number

Email address

Signature

Date

YYYY

MM

DD

ITEM 11 – CONTACT PERSON

Provide the following business contact information for the individual that the securities regulatory authority or regulator may contact with any questions regarding the contents of this report, if different than the individual certifying the report in Item 10.

☐ Same as individual certifying the report

Full legal name

--	--	--

 Title

--

Family name First given name Secondary given names

Name of company

--

Telephone number

--

 Email address

--

Notice – Collection and use of personal information

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

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

The attached Schedules 1 and 2 may contain personal information of individuals and details of the distribution(s). The information in Schedules 1 and 2 will not be placed on the public file of any securities regulatory authority or regulator. However, freedom of information legislation may require the securities regulatory authority or regulator to make this information available if requested.

By signing this report, the issuer/underwriter confirms that each individual listed in Schedule 1 or 2 of the report who is resident in a jurisdiction of Canada:

- a) has been notified by the issuer/underwriter of the delivery to the securities regulatory authority or regulator of the information pertaining to the individual as set out in Schedule 1 or 2, that this information is being collected by the securities regulatory authority or regulator under the authority granted in securities legislation, that this information is being collected for the purposes of the administration and enforcement of the securities legislation of the local jurisdiction, and of the title, business address and business telephone number of the public official in the local jurisdiction, as set out in this form, who can answer questions about the securities regulatory authority's or regulator's indirect collection of the information, and
- b) has authorized the indirect collection of the information by the securities regulatory authority or regulator.

SCHEDULE 1 TO FORM 45-106F1 (CONFIDENTIAL PURCHASER INFORMATION)

Schedule 1 must be filed in the format of an Excel spreadsheet in a form acceptable to the securities regulatory authority or regulator.

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

a) General information (*provide only once*)

1. Name of issuer
2. Certification date (YYYY-MM-DD)

Provide the following information for each purchaser that participated in the distribution. For each purchaser, create separate entries for each distribution date, security type and exemption relied on for the distribution.

b) Legal name of purchaser

1. Family name
2. First given name
3. Secondary given names
4. Full legal name of non-individual (*if applicable*)

c) Contact information of purchaser

1. Residential street address
2. Municipality
3. Province/State

4. Postal code/Zip code
5. Country
6. Telephone number
7. Email address *(if available)*

d) Details of securities purchased

1. Date of distribution (YYYY-MM-DD)
2. Number of securities
3. Security code
4. Amount paid (Canadian \$)

e) Details of exemption relied on

1. Rule, section and subsection number
2. If relying on section 2.3 [*Accredited investor*] of NI 45-106, provide the paragraph number in the definition of “accredited investor” in section 1.1 of NI 45-106 that applies to the purchaser. ~~(select only one)~~ Select only one – if the purchaser is a permitted client that is not an individual, “NIPC” can be selected instead of the paragraph number.
3. If relying on section 2.5 [*Family, friends and business associates*] of NI 45-106, provide:
 - a. the paragraph number in subsection 2.5(1) that applies to the purchaser *(select only one)*; and
 - b. if relying on paragraphs 2.5(1)(b) to (i), provide:
 - i. the name of the director, executive officer, control person, or founder of the issuer or affiliate of the issuer claiming a relationship to the purchaser. *(Note: if Item 9(a) has been completed, the name of the director, executive officer or control person must be consistent with the name provided in Item 9 and Schedule 2.)*
 - ii. the position of the director, executive officer, control person, or founder of the issuer or affiliate of the issuer claiming a relationship to the purchaser.
4. If relying on subsection 2.9(2) or, in Alberta, New Brunswick, Nova Scotia, Ontario, Québec, or Saskatchewan, subsection 2.9(2.1) [*Offering memorandum*] of NI 45-106 and the purchaser is an eligible investor, provide the paragraph number in the definition of “eligible investor” in section 1.1 of NI 45-106 that applies to the purchaser. *(select only one)*

f) Other information

Paragraphs f)1. and f)2. do not apply if one or more of the following apply:

(a) the issuer is a foreign public issuer;

(b) the issuer is a wholly owned subsidiary of a foreign public issuer;

(c) the issuer is distributing only eligible foreign securities only to permitted clients.¹

1. Is the purchaser a registrant? (Y/N)
2. Is the purchaser an insider of the issuer? (Y/N) *(not applicable if the issuer is an investment fund)*
3. Full legal name of any person compensated for the distribution to the purchaser. *If ~~the~~ a person compensated is a registered firm, provide the firm NRD number only. (Note: the ~~name~~ names must be consistent with the ~~name~~ names of the ~~person~~ persons compensated as provided in Item 8.)*

INSTRUCTIONS FOR SCHEDULE 1

Any securities issued as payment for commissions or finder’s fees must be disclosed in Item 8 of the report, not in Schedule 1.

Details of exemption relied on – When identifying the exemption the issuer relied on for the distribution to each purchaser, refer to the rule, statute or instrument in which the exemption is provided and identify the specific section and, if applicable, subsection or paragraph. For example,

¹ In Ontario, the substance of the blacklined italicized text was already incorporated in an Ontario-only amendment that came into force on July 29, 2016. The relief reflected in this italicized text was also previously provided in other CSA jurisdictions through blanket orders. Identical relief is now proposed for all CSA jurisdictions.

if the issuer is relying on an exemption in a National Instrument, refer to the number of the National Instrument, and the subsection or paragraph number of the specific provision. If the issuer is relying on an exemption in a local blanket order, refer to the blanket order by number.

For exemptions that require the purchaser to meet certain characteristics, such as the exemption in section 2.3 [*Accredited investor*], section 2.5 [*Family, friends and business associates*] or subsection 2.9(2) or, in Alberta, New Brunswick, Nova Scotia, Ontario, Québec, or Saskatchewan, subsection 2.9(2.1) [*Offering memorandum*] of NI 45-106, provide the specific paragraph in the definition of those terms that applies to each purchaser.

Reports filed under paragraph 6.1(1)(j) [*TSX Venture Exchange offering*] of NI 45-106 – For reports filed under paragraph 6.1(1)(j) [*TSX Venture Exchange offering*] of NI 45-106, Schedule 1 needs to list the total number of purchasers by jurisdiction only, and is not required to include the name, residential address, telephone number or email address of the purchasers.

SCHEDULE 2 TO FORM 45-106F1 (CONFIDENTIAL DIRECTOR, EXECUTIVE OFFICER, PROMOTER AND CONTROL PERSON INFORMATION)

Schedule 2 must be filed in the format of an Excel spreadsheet in a form acceptable to the securities regulatory authority or regulator.

Complete the following only if Item 9(a) is required to be completed. **This schedule also requires information to be provided about control persons of the issuer at the time of the distribution.**

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

a) General information (*provide only once*)

1. Name of issuer
2. Certification date (YYYY-MM-DD)

b) Business contact information of Chief Executive Officer (*if not provided in Item 10 or 11 of report*)

1. Email address
2. Telephone number

c) Residential address of directors, executive officers, promoters and control persons of the issuer

Provide the following information for each individual who is a director, executive officer, promoter or control person of the issuer at the time of the distribution. If the promoter or control person is not an individual, provide the following information for each director and executive officer of the promoter and control person. (Note: names of directors, executive officers and promoters must be consistent with the information in Item 9 of the report, if required to be provided.)

1. Family name
2. First given name
3. Secondary given names
4. Residential street address
5. Municipality
6. Province/State
7. Postal code/Zip code
8. Country
9. Indicate whether the individual is a control person, or a director and/or executive officer of a control person (*if applicable*)

d) Non-individual control persons (*if applicable*)

If the control person is not an individual, provide the following information. For locations within Canada, state the province or territory, otherwise state the country.

1. Organization or company name
2. Province or country of business location

Questions:

Refer any questions to:

Alberta Securities Commission

Suite 600, 250 – 5th Street SW
Calgary, Alberta T2P 0R4
Telephone: ~~(403)-~~297-6454
Toll free in Canada: 1-877-355-0585
Facsimile: ~~(403)-~~297-2082

[Public official contact regarding indirect collection of information:
FOIP Coordinator](#)

British Columbia Securities Commission

P.O. Box 10142, Pacific Centre
701 West Georgia Street
Vancouver, British Columbia V7Y 1L2
Inquiries: ~~(604)-~~899-6854
Toll free in Canada: 1-800-373-6393
Facsimile: ~~(604)-~~899-6581

Email: inquiriesFOI-privacy@bcsc.bc.ca

[Public official contact regarding indirect collection of information:
FOI Inquiries](#)

The Manitoba Securities Commission

500 – 400 St. Mary Avenue
Winnipeg, Manitoba R3C 4K5
Telephone: ~~(204)-~~945-~~2548~~[2561](tel:2561)
Toll free in Manitoba: 1-800-655-5244
Facsimile: ~~(204)-~~945-0330

[Public official contact regarding indirect collection of information:
Director](#)

Financial and Consumer Services Commission (New Brunswick)

85 Charlotte Street, Suite 300
Saint John, New Brunswick E2L 2J2
Telephone: ~~(506)-~~658-3060
Toll free in Canada: 1-866-933-2222
Facsimile: ~~(506)-~~658-3059
Email: info@fcnb.ca

[Public official contact regarding indirect collection of information:
Chief Executive Officer and Privacy Officer](#)

Government of Newfoundland and Labrador

Financial Services Regulation Division

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

[Public official contact regarding indirect collection of information:
Superintendent of Securities](#)

[Autorité des marchés financiers](#)

[800, rue du Square-Victoria, 22^e étage](#)

[C.P. 246, tour de la Bourse](#)

[Montréal, Québec H4Z 1G3](#)

[Telephone: 514-395-0337 or 1-877-525-0337](#)

[Government of the Northwest Territories](#)

[Office of the Superintendent of Securities](#)

[P.O. Box 1320](#)

[Yellowknife, Northwest Territories X1A 2L9](#)

[Telephone: 867-767-9305](#)

[Facsimile: 867-873-0243](#)

[Public official contact regarding indirect collection of information:
Superintendent of Securities](#)

[Nova Scotia Securities Commission](#)

[Suite 400, 5251 Duke Street](#)

[Duke Tower](#)

[P.O. Box 458](#)

[Halifax, Nova Scotia B3J 2P8](#)

[Telephone: 902-424-7768](#)

[Facsimile: 902-424-4625](#)

[Public official contact regarding indirect collection of information:
Executive Director](#)

Government of Nunavut

Department of Justice

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

[Public official contact regarding indirect collection of information:
Superintendent of Securities](#)

Ontario Securities Commission

20 Queen Street West, 22nd Floor
Toronto, Ontario M5H 3S8
Telephone: ~~(416)-~~593- 8314
Toll free in Canada: 1-877-785-1555
Facsimile: ~~(416)-~~593-8122
Email: exemptmarketfilings@osc.gov.on.ca
Public official contact regarding indirect collection of information:
Inquiries Officer

Prince Edward Island Securities Office

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

[Autorité des marchés financiers](#)

[800, Square-Victoria, 22^e étage](#)

[C.P. 246, Tour de la Bourse](#)

[Montréal, Québec H4Z 1G3](#)

[Telephone: \(514\) 395-0337 or 1-877-525-0337](#)

[Facsimile: \(514\) 873-6155 \(For filing purposes only\)](#)

[Facsimile: \(514\) 864-6381 \(For privacy requests only\)](#)

[Email: \[financementdessocietes@lautorite.qc.ca\]\(mailto:financementdessocietes@lautorite.qc.ca\) \(For corporate finance issuers\); \[fonds_dinvestissement@lautorite.qc.ca\]\(mailto:fonds_dinvestissement@lautorite.qc.ca\) \(For investment fund issuers\)](#)

[Financial and Consumer Affairs Authority of Saskatchewan](#)

[Suite 601—1919 Saskatchewan Drive](#)

[Regina, Saskatchewan S4P 4H2](#)

[Telephone: \(306\) 787-5879](#)

[Facsimile: \(306\) 787-5899](#)

[Facsimile: 514-873-6155](tel:514-873-6155) (For filing purposes only)
[Facsimile: 514-864-6381](tel:514-864-6381) (For privacy requests only)
Email: financementdessocietes@lautorite.qc.ca (For corporate finance issuers); fonds_dinvestissement@lautorite.qc.ca (For investment fund issuers)
[Public official contact regarding indirect collection of information: Corporate Secretary](#)

[Financial and Consumer Affairs Authority of Saskatchewan](#)
[Suite 601 - 1919 Saskatchewan Drive](#)
[Regina, Saskatchewan S4P 4H2](#)
[Telephone: 306-787-5842](tel:306-787-5842)
[Facsimile: 306-787-5899](tel:306-787-5899)
[Public official contact regarding indirect collection of information: Director](#)

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

~~Nova Scotia Securities Commission~~
[Government of Yukon](#)
[Department of Community Services](#)
[Suite 400, 5251 Duke Street, 1st Floor](#)
[Duke Tower](#)
P.O. Box ~~4582703~~, C-6
~~Halifax, Nova Scotia B3J 2P8~~
[Whitehorse, Yukon Y1A 2C6](#)
Telephone: ~~(902) 424-7768~~ [867-667-5466](tel:867-667-5466)
~~Facsimile: (902) 424-4625~~ [Facsimile: 867-393-6251](tel:867-393-6251)
Email: securities@gov.yk.ca
[Public official contact regarding indirect collection of information: Superintendent of Securities.](#)

[Public official contact regarding indirect collection of information: Superintendent of Securities](#)

~~Government of Yukon~~

~~Department of Community Services~~

~~Law Centre, 3rd Floor~~

~~2130 Second Avenue~~

~~Whitehorse, Yukon Y1A 5H6~~

~~Telephone: (867) 667-5314~~

~~Facsimile: (867) 393-6251~~

ANNEX D

LOCAL MATTERS

There are no local matters in Alberta to consider at this time.



RP Investment Advisors LP
39 Hazelton Avenue
Toronto, ON M5R 2E3
www.rpia.ca

Main: 647.776.1777
Toll Free: 1.877.720.1777
Fax: 647.288.2002
E-mail: rpia@rpia.ca

September 1, 2017

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

c/o

The Secretary
Ontario Securities Commission
20 Queen Street West, 22nd Floor
Toronto, Ontario M5H 3S8
Fax: 416-593-2318
comments@osc.gov.on.ca

Mme Anne-Marie Beaudoin
Corporate Secretary
Autorité des marchés financiers
800, rue du Square-Victoria, 22e étage
C.P. 246, tour de la Bourse
Montréal, Québec H4Z 1G3
Fax: 514-864-6381
consultation-en-cours@lautorite.qc.ca

Dear Sirs and Mesdames:

RE: Feedback regarding proposed amendments to National Instrument 45-106 Prospectus Exemptions relating to Reports of Exempt Distribution

RP Investment Advisors LP is a specialized, credit focused, fixed income investment management firm that is registered as an Investment Fund Manager, Portfolio Manager and Exempt Market Dealer in multiple Canadian jurisdictions. RPIA is located in Toronto, Ontario and our principle regulator is the Ontario Securities Commission. We actively participate in the global fixed income market and manage approximately C\$4.4 billion in assets, primarily on behalf of Canadian investors.

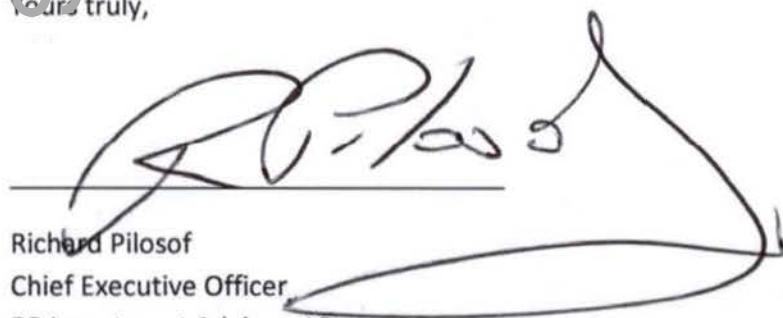
We refer to our comment letter dated August 23, 2016 where we highlighted certain concerns related to changes in the Report of Exempt Distribution, under National Instrument 45-106 ("NI 45-106"). We would like to reiterate our support of the Canadian Securities Administrators' ("CSA") intention to obtain more detailed information about the exempt market in Canada, as we believe this information is important to foster effective oversight and regulation of what could otherwise be viewed as a somewhat opaque marketplace. This oversight in turn benefits participants in the exempt market, and primarily investors who rely on access to this market in order to achieve their investment objectives.

We welcome the opportunity to provide the CSA with constructive and positive feedback pertaining to the newly proposed amendments to NI 45-106. In our view, the proposed amendments address many of the issues that we've observed and especially those raised by foreign dealers who underwrite and distribute new issue securities in Canada, pursuant to the prospectus exemptions in NI 45-106.

Both of the broader items addressed by the proposed amendments, in our view, should have a positive impact on the Canadian exempt market. Clarifying and introducing greater flexibility with respect to the certification requirements will help alleviate various concerns that dealers have expressed. Likewise, we believe that the proposed streamlining of information requirements will be beneficial. An example we would like to highlight is the proposal to no longer require report filers to indicate the paragraph of the definition of accredited investor that applies to a purchaser, in the case of a distribution to a non-individual permitted client. Based on our experience this change will reduce administrative effort not only for dealers, but also for the institutional investors to whom the distributions are made.

We sincerely appreciate your commitment and action on this matter. We believe these measures will help ensure that Canadian exempt market participants continue to have fair access to foreign dealer distributions and that supports the advancement of the exempt market space for the mutual benefit of Canadian investors.

Yours truly,



Richard Pilosof
Chief Executive Officer
RP Investment Advisors LP

September 6, 2017

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

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

Jessie Gill
Legal Counsel, Corporate Finance
Alberta Securities Commission
Email: jessie.gill@asc.ca

Dear Sirs and Mesdames:

CSA Multilateral Notice and Request for Comment re: National Instrument 45-106 *Prospectus Exemptions*

This letter is in response to the request for comment on CSA Multilateral Notice and Request for Comment re: Proposed Amendments to National Instrument 45-106 *Prospectus Exemptions* relating to Reports of Exempt Distribution (the “**Notice**”). We appreciate the opportunity to provide comments to the Canadian Securities Administrators (“**CSA**”). As a number of comments in this letter relate specifically to Alberta issuers and Alberta legislation, this letter is also being sent directly to the Alberta Securities Commission (“**ASC**”).

Schedule 1 to Form 45-106F1 Report of Exempt Distribution

The CSA have proposed, among other things, amending Schedule 1 to Form 45-106F1 to allow issuers distributing securities to “non-individual permitted clients” to indicate this without having to specify the applicable paragraph number in the definition of “accredited investor” in section 1.1 of NI 45-106. We support this proposed amendment, but believe it should apply to all permitted clients, not just non-individuals.

CAN_DMS: \108087374\2

 **NORTON ROSE FULBRIGHT**

Barristers & Solicitors / Patent & Trade-mark Agents

Norton Rose Fulbright Canada LLP
400 3rd Avenue SW, Suite 3700
Calgary, Alberta T2P 4H2 CANADA

F: +1 403.264.5973
nortonrosefulbright.com

Katherine Prusinkiewicz
+1 403.267.8313
katherine.prusinkiewicz@nortonrosefulbright.com

Our reference
01108544-0097

M^e Anne-Marie Beaudoin
Corporate Secretary
Autorité des marchés financiers
800, rue du Square-Victoria, 22^e étage
C.P. 246, tour de la Bourse
Montréal (Québec) H4Z 1G3
E-mail: consultation-en-cours@lautorite.qc.ca

We have found that dealers in the U.S., in complying with know-your-client rules, are typically able to represent to Canadian issuers that they reasonably believe that prospective purchasers are either qualified institutional buyers (**QIBs**) or otherwise meet an exemption in the U.S., but do not collect the level of detailed information from their clients that would allow them to provide the specific paragraph number(s) in the definition of “accredited investor”. Although a QIB would benefit from the proposed amendment to exempt “non-individual permitted clients” from having to specify the category of accredited investor, issues would still arise in respect of other qualified foreign buyers. Given the exemption requirements in the U.S. and the requirements imposed contractually on dealers, a prospective purchaser that is eligible in the U.S. would qualify as an accredited investor in Canada as well. However, our experience has been that dealers are often unable to specify the applicable paragraph number in the definition of “accredited investor” based on the information that they already collect regarding their clients and are unwilling to change their practices to collect additional information because it is not market practice to do so. We have found this to be of particular issue in U.S.-denominated high-yield debt financings.

Beyond the apparent inability of U.S. dealers to readily provide detailed exemption information is the issue of the policy rationale behind such a requirement. Institutional investors and other permitted clients are large and sophisticated entities that do not require the same level of oversight and protection by the CSA.

Alberta issuers are more particularly impacted by the current requirements of Form 45-106F1 than those of some other jurisdictions as a result of ASC Policy 45-601 – *Distributions Outside Alberta*, which results in an issuance of securities by an Alberta issuer to a purchaser outside of Alberta being considered a “distribution” under Alberta securities legislation, requiring either a prospectus or an exemption under Alberta law. Accordingly, if relying on the accredited investor exemption in NI 45-106, an Alberta issuer must also provide the contact information and accredited investor paragraph number for foreign subscribers. Such disclosure requirements make it more difficult for Alberta issuers to access foreign capital markets, with little apparent benefit to the Canadian public. Our firm has recently been advised by a large U.S. broker that it was considering no longer acting as underwriter for Alberta issuers because of the requirement to provide detailed subscriber and exemption information for U.S. subscribers when it was not required to do so for Ontario issuers.

As a result of ASC Policy 45-601, other exemptions may be more attractive to Alberta issuers who are offering securities to subscribers resident outside of Canada. These include ASC Rule 72-501 – *Distributions to Purchasers Outside Alberta (ASC Rule 72-501)* as well as the minimum amount exemption in Section 2.10 of NI 45-106. However, certain specific requirements of those exemptions often render them impractical or undesirable to use.

ASC Rule 72-501 - Distributions to Purchasers Outside Alberta

Although the exemption from the prospectus requirement in ASC Rule 72-501 may be used by issuers distributing securities to purchasers resident outside of Canada, there are barriers to relying on the exemption for certain types of financings. Section 3.1(b) of ASC Rule 72-501 requires the purchaser to certify in the subscription agreement that the purchaser is not a resident of Alberta. Likewise, Section 3.1(c) of the rule requires purchasers to acknowledge certain factual matters in the subscription agreement. However, oftentimes in cross-border financings there is no subscription agreement for a prospective purchaser to complete, and therefore no opportunity for the issuer to obtain such a certification or acknowledgement. This is particularly true in the case of debt offerings, including high-yield debt financings. Instead, the purchaser is deemed to make the representations and warranties contained in the relevant offering memorandum. If the issuer wishes to raise money, it must follow market practice and is typically not in a position to impose additional requirements on a dealer. But the unintended consequence is that the issuer is then unable to avail itself of the exemption in ASC Rule 72-501.

Accordingly, we request that the ASC amend section 3.1(b) of ASC Rule 72-501 as follows:

“the purchaser certifies in the subscription agreement or makes a deemed representation in an offering memorandum that the purchaser is not a resident of Alberta and the issuer does not believe, and has no reasonable grounds to believe, that the certification or deemed representation is false”.

Likewise, we request that the ASC make the following similar amendment to section 3.1(c) of ASC Rule 72-501:

“the purchaser acknowledges in the subscription agreement or makes a deemed representation in an offering memorandum that...”

Alternatively, the exemption from the prospectus requirement in Part 2 of ASC Rule 72-501 for Eurobond offerings, which does not require the representations and acknowledgements described above, could be expanded to apply to high-yield debt securities. Since such securities would not typically be listed or quoted on a “genuine market”, a minimum investment amount requirement or a qualified purchaser requirement could be included to satisfy any policy concerns of the ASC.

We note that BC Instrument 72-503 - *Distribution of Securities outside British Columbia* (“**BC Instrument 72-503**”) is very similar to ASC Rule 72-501 and that as a consequence BC issuers may encounter similar difficulties with utilizing the exemption for cross-border debt financings.

We note further that proposed OSC Rule 72-503 – *Distributions Outside Canada*, in contrast to ASC Rule 72-501 and BC Instrument 72-503, would provide a series of broad and streamlined exemptions for distributions of securities to persons and companies outside Canada. For example, the prospectus requirement would not apply in connection with such a distribution where, quite simply, the issuer has materially complied with the securities law requirements of the jurisdiction outside Canada. We also note proposed OSC Form 72-503F – *Report of Distributions Outside Canada*, which does not require the issuer to disclose any information about the purchasers and therefore would impose far less of an administrative burden on the issuer. The ASC should consider adopting a similar approach in order for Alberta issuers to remain competitive and be able to efficiently access foreign capital markets.

Minimum Amount Exemption in Section 2.10 of NI 45-106

Although the “minimum amount” prospectus exemption set forth in Section 2.10 of NI 45-106 is generally available as an alternative to the accredited investor exemption and the exemption in ASC Rule 72-501 for a trade in a security to a non-individual who invests a minimum of \$150,000 in cash in an issuer, it has become less popular in Alberta since the introduction of ASC Rule 45-511 - *Local Prospectus Exemptions and Related Requirements* (**ASC Rule 45-511**) in June 2010. Due to the application of Section 3.4 of ASC Rule 45-511, any document purporting to describe the business and affairs of the issuer and prepared for review by prospective purchasers to assist in making an investment decision in connection with reliance on Section 2.10 is designated to be an offering memorandum, which has disclosure and liability implications. In particular, the granting of statutory rights of rescission or damages and two-day right of rescission make the exemption less attractive to issuers.

To make this prospectus exemption more attractive to Alberta issuers, while still recognizing the importance of investor protection, we propose either the creation of a new exemption or the modification of the existing exemption and ASC Rule 45-511 to provide for a category of “super investment” that would apply to investments by non-individuals of, for example, greater than \$500,000. We propose that for such large investments, ASC Rule 45-511 would not apply. A non-individual that is able to invest more than \$500,000 is likely a sophisticated investor that does not require the same level of protection by the CSA.

Should you have any questions with respect to the foregoing, please do not hesitate to contact the undersigned.

Yours very truly,

(signed) "*Katherine Prusinkiewicz*"

Katherine Prusinkiewicz
Partner, Senior Knowledge Lawyer

KP/

September 6, 2017

Without Prejudice
By E-mail

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

The Secretary
 Ontario Securities Commission
 20 Queen Street West, 22nd Floor
 Toronto, Ontario M5H 3S8
 Fax: 416-593-2318
comments@osc.gov.on.ca

Me Anne-Marie Beaudoin
 Corporate Secretary
 Autorité des marchés financiers
 800, rue du Square-Victoria, 22e étage
 C.P. 246, tour de la Bourse
 Montréal, Québec H4Z 1G3
 Fax: 514-864-6381
consultation-en-cours@lautorite.qc.ca

Dear Sirs/Mesdames:

**Re: CSA Multilateral Notice and Request for Comment Proposed Amendments to
 National Instrument 45-106 *Prospectus Exemptions* relating to Reports of
 Exempt Distribution**

We submit the following comments in response to the Notice and Request for Comments published by the Canadian Securities Administrators (the “**CSA**”), other than the British Columbia Securities Commission, on June 8, 2017 with respect to proposed amendments (the “**Proposed Amendments**”) to National Instrument 45-106 (“**NI 45-106**”) and the report of exempt distribution set out in Form 45-106F1 *Report of Exempt Distribution* (the “**Report**”).

We have organized our comments below with reference to the proposed rule, policy or form to which the comments relate. All references to parts and sections are to the relevant parts or sections of the applicable rule, policy or form.

Thank you for the opportunity to comment on the Proposed Amendments. This letter represents the general comments of certain individual members of our securities practice group (and not those of the firm generally or any client of the firm) and are submitted without prejudice to any position taken or that may be taken by our firm on its own behalf or on behalf of any client.

1. General

We are generally supportive of the Proposed Amendments. We are of the view that the reduced regulatory burden that would result from the implementation of the Proposed Amendments would help in reducing some of the unnecessary barriers to exempt market activity in Canada.

As a general comment, however, we would suggest that the CSA consider whether the benefit of the information being requested is greater than the burden it may impose on filers, particularly based on the information collected since the implementation of the Report in 2016. As part of this assessment, we would suggest that the CSA consider whether certain of the required disclosure provides any real utility to the CSA. For example, Item 5 of the Report requires that filers identify the NAICS industry code that corresponds to the issuer's primary business. Compliance with this requirement requires filers to exercise a significant amount of judgment as there are often many NAICS codes that may apply to a particular issuer. As such, issuers in the same industry may not select the same NAICS code and the same issuer may be categorized in different ways for multiple distributions, depending upon who is completing the Report. There is no way to guarantee consistent classification of issuers' industries. We respectfully question whether such inconsistent data provides the CSA with any meaningful information about Canadian capital markets.

2. Purchaser Information

We respectfully suggest that the CSA consider including additional guidance in the Report as to how an issuer is to determine whether a distribution is considered to have taken place in a particular jurisdiction. Instruction 2 to the Report provides that issuers located outside of Canada who determine that a distribution has taken place in a jurisdiction of Canada are required to include information about purchasers resident in that jurisdiction only (i.e., foreign purchasers are not required to be included in the Report); However, similar guidance is not provided in the Report with respect to Canadian issuers who sell securities to non-Canadian purchasers. We understand that generally, if the issuer has a substantial connection to Alberta, British Columbia or Quebec and the issuer distributes securities to a purchaser outside the local province, such distribution is considered by the regulators to be a distribution in the local province and therefore that purchaser is to be identified in the Report. We understand this is not the case in Ontario. However, there still remains some uncertainty, and, based on our experience, mixed practice, in this regard. We urge the CSA to amend the Report so that information about non-Canadian purchasers is not required in Schedule 1, or, in the alternative, to provide concrete guidance as to when a non-Canadian purchaser should be included in the Report.

3. Certification

While we are supportive of the revisions to Item 10 of the Report, we would suggest additional language further clarifying that the individual certifying the Report is doing so on behalf of the filer and "not in his/her personal capacity".

4. Schedule 1 to Form 45-106F1 (Confidential Purchaser Information)

We strongly support the proposed change to Schedule 1 of the Report which would permit filers to select "NIPC" where a purchaser is a non-individual permitted client, rather than to provide the paragraph number in the definition of "accredited investor" in section 1.1 of NI 45-106 applicable to the purchaser. This amendment will significantly reduce the compliance burden associated with the Report. Based on our experience, we believe that the benefit of the information currently required by the Report (i.e., the category of accredited investor) does not outweigh the burden imposed on filers, particularly for foreign issuers accessing Canadian capital markets.

Similarly, we strongly support the Proposed Amendment to subsection f) of Schedule 1 to the Report which permits foreign issuers to omit information regarding whether a purchaser is an insider or a registrant for the same reasons noted above.

5. Item 7(g) Net Proceeds to the investment fund by jurisdiction

While not part of the Proposed Amendments, we would ask that the CSA consider revising the requirements of Item 7(g) of the Report. Based on our experience, the requirement to track and report net redemptions by province is a burdensome undertaking that requires a level of reporting that is onerous to most alternative fund managers, especially non-resident fund managers. In addition, we have found that some issuers consider such data to be highly confidential and commercially sensitive.

* * * * *

Thank you for the opportunity to comment on the Proposed Amendments. Please do not hesitate to contact any of the undersigned if you have any questions in this regard.

Yours truly,

Laura Levine,

on my own behalf and on behalf of

Ramandeep K. Grewal
D'Arcy Nordick
Darin R. Renton
Simon A. Romano

September 6, 2017

Submitted via e-mail to comments@osc.gov.on.ca and consultation-en-cours@lautorite.qc.ca

The Secretary
Ontario Securities Commission
20 Queen Street West, 22nd Floor
Toronto, ON M5H 3S8

Me Anne-Marie Beaudoin
Corporate Secretary
Autorité des marchés financiers
800, rue du square Victoria, 22e étage
C.P. 246, tour de la Bourse
Montréal, QC H4Z 1G3

cc: Alberta Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
Manitoba Securities Commission
Financial and Consumer Services Commission (New Brunswick)
Nova Scotia Securities Commission
Superintendent of Securities, Department of Justice and Public Safety, PEI
Securities Commission of Newfoundland and Labrador
Superintendent of Securities, Yukon
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Nunavut

Proposed Amendments to National Instrument 45-106 *Prospectus Exemptions* relating to Reports of Exempt Distribution

Dear Sirs/Mesdames:

We are writing to you in response to the request of the Canadian Securities Administrators (the "CSA") for comments (the "**Request for Comments**") on the proposed amendments to National Instrument 45-106 *Prospectus Exemptions* published on June 8, 2017 (the "**Proposed Amendments**") that would amend the report of exempt distribution set out in Form 45-106F1 *Report of Exempt Distribution* (the "**Report**"). This comment letter is submitted jointly by Blake, Cassels & Graydon LLP, Davies Ward Phillips & Vineberg LLP, McCarthy Tétrault LLP, Osler, Hoskin & Harcourt LLP and Stikeman Elliott LLP.

We are very supportive of the Proposed Amendments and of the CSA's efforts to address some of the concerns identified by market participants regarding the changes made to the Report effective June 30, 2016 (the "**2016 Amendments**"). We believe the Proposed Amendments will reduce the compliance burden on issuers and underwriters and, therefore, will facilitate more efficient capital raising in the Canadian exempt market, particularly in the context of extending U.S. and other global securities offerings to eligible investors in Canada.

In particular, we are especially supportive of the proposed change to Schedule 1 permitting filers to indicate that a non-individual purchaser relying on the "accredited investor" exemption is a "permitted client", without identifying the specific subparagraph of the accredited investor exemption applicable to that purchaser. We believe that this change will greatly reduce one of

the most significant compliance burdens introduced by the 2016 Amendments, without unduly interfering with the CSA's ability to collect information about the Canadian exempt market and its participants.

Our comments in this letter are generally intended to clarify the intent of the Proposed Amendments, and to propose certain additional changes to the Report which we believe will further reduce the compliance burden on market participants while still permitting the CSA to achieve its regulatory objectives.

Part I – Clarifying Changes

Item 10 – Certification Wording

The proposed revised certification wording contained in the Proposed Amendments is a significant improvement over the existing wording in that it expressly recognizes the existence of a due diligence defence and it contains a knowledge qualifier.

We would propose the following further changes which we believe are fully consistent with the objectives of the Proposed Amendments:

"By completing the information below, I certify, on behalf of the issuer/underwriter/investment fund manager filing this report (and not in my personal capacity), to the securities regulatory authority or regulator, as applicable, that I have reviewed this report and to my knowledge, having ~~exercised reasonable diligence~~ made reasonable inquiries with respect to information outside my personal knowledge, the information provided in this report is true and, to the extent required, complete."

The first change further clarifies that the certifying individual is acting solely in his or her capacity as a representative of the entity filing the Report, and not in a personal capacity.

The second change recognizes that the individual signing the certificate in the Report is unlikely to have personal knowledge of much of the information called for by the Report, and that there should not be any expectation that the individual signatory conduct any independent due diligence investigation regarding the information required to complete the Report, other than making reasonable inquiries of others. For example, if the Report is being signed on behalf of the issuer, the signatory may have no means of obtaining any information regarding the purchasers of the securities other than by making reasonable inquiries of the underwriters involved. Conversely, if the Report is being signed on behalf of an underwriter, the signatory may have no means of obtaining any information regarding the issuer required by the Report other than by making reasonable inquiries of the issuer, or other individuals within the underwriter's organization who have participated in due diligence investigations of the issuer.

Item 10 – Delegation

Currently, Item 10 of the Report requires that an officer or director of the issuer or underwriter sign the certification appearing in Item 10, and prohibits the delegation of the signing of that

certification statement to an individual preparing the Report on behalf of the issuer or underwriter.

We are very appreciative of the CSA's recognition of the practical difficulties presented by the current certification requirements and prohibition of delegation. However, we believe that further clarification is necessary regarding what is intended by the proposed change. The CSA has stated in the Request for Comments that the amendment is intended to "permit authorized agents to sign the certification". The instructions to Item 10 further state that delegation may only be to "an agent that has been authorized by an officer or director of the issuer or underwriter to prepare and certify the report on behalf of the issuer or underwriter."

Consider the following example. Dealer X, a U.S. investment bank, routinely sells securities of non-Canadian issuers to Canadian institutional investors that are permitted clients, and is required to file a Report for each such sale. Dealer X has engaged Firm Y, a Canadian law firm, to assist it in preparing and filing the required Reports. We are concerned that the proposed amended wording in Item 10 is ambiguous regarding:

- In the box titled "Name of issuer/underwriter/investment fund manager/agent", is the name to be inserted Dealer X (as underwriter), or Firm Y (as agent), or both?
- Are the "full legal name" boxes to be completed with the name of the officer or director of Dealer X who has delegated the certification, or the name of the lawyer or other individual at Firm Y to whom certification authority has been delegated?

To resolve these ambiguities, we would recommend that the second paragraph in Item 10 of the Report be deleted entirely and replaced as follows:

The certification below may be signed by any officer, director, partner, employee or other representative (a "Certifying Individual") of a law firm, service provider or other authorized agent of the issuer or underwriter filing the report (a "Filing Agent"), provided that the Filing Agent has been given authorization to certify this report by a director or officer of the issuer or underwriter required to file this report (the "Filer"). If this report is being certified by a Filing Agent: (i) provide both the name of the Filer and the name of the Filing Agent in the first box below; and (ii) complete all other boxes with the applicable information for, and signature of, the Certifying Individual.

Purchasers Located Outside of Canada

There is considerable confusion among practitioners, and we believe also among CSA members, regarding when non-Canadian purchasers must be included in the disclosure in Item 7 of the Report and listed in Schedule 1 of the Report, and when they do not.

It is our understanding that the Report requires including disclosure of sales to purchasers outside Canada in both Item 7 and Schedule 1 if, and only if, a Canadian prospectus exemption which requires the filing of a Report is being relied upon to make the distribution from a province of Canada to purchasers outside Canada. For example, an issuer headquartered in British Columbia relying on the accredited investor exemption to make a distribution to a purchaser in British

Columbia, a purchaser in Ontario and a purchaser in the United States would report all three purchasers. On the other hand, an issuer headquartered in Ontario selling securities to a purchaser in Ontario, a purchaser in British Columbia and a purchaser in the United States would only report the Ontario and British Columbia sales, and not the sale in the United States, if the issuer has concluded that the sale to the purchaser in the United States was not subject to the prospectus requirements of Ontario securities laws. See General Instructions, Instruction #2, and Items 7(f) and 7(g) of the Report.

In addition to the confusion we have observed, we believe that the requirement to disclose the names and other information regarding purchasers of securities outside Canada in Schedule 1 of the Report creates an unnecessary and disproportionate burden on Canadian issuers in the relevant provinces conducting certain capital raising activities outside Canada, including broad-based U.S. registered offerings or offerings under Rule 144A which could entail sales to hundreds, if not more, qualified institutional buyers.

We respectfully submit that the CSA should amend the Report so that the inclusion of information regarding purchasers outside Canada in Item 7 and Schedule 1 is not required under any circumstances, no matter which province the issuer is located in, and no matter what the technical analysis may be regarding whether the non-Canadian sales constitute a distribution. One of the key stated regulatory objectives of the Report is to obtain information regarding the Canadian exempt market and exempt market participants. We submit that gathering information regarding the identity of purchasers outside Canada is not in fact necessary to achieve this objective. In that regard, we note that in the recently proposed Ontario Form 72-503F, *Report of Distributions Outside Canada*, there is no requirement to identify the non-Canadian purchasers to which the distribution is made. Alternatively, we submit that the detailed information regarding each specific purchase that is called for in Schedule 1 should not be required for non-Canadian purchasers, and that only the aggregated information called for by Item 7 should be required for reporting distributions outside Canada, preferably with respect to all foreign jurisdictions in the aggregate in Items 7(f), 7(g) and 8(d), rather than for each foreign jurisdiction individually.

However, if the CSA considers the burdens potentially imposed by the requirement to include specific information regarding non-Canadian purchasers in Schedule 1 to be justified by an appropriate investor protection or other regulatory objective, we suggest the following clarifying revisions:

- *General Instructions, Instruction #2 – Issuers located outside of Canada.* We suggest that the instruction be revised as follows:

"Information with respect to a distribution being made to purchasers outside Canada, and with respect to purchasers outside of Canada, is required to be included in the responses to Item 7 and Schedule 1 if, and only if, the sales to those purchasers outside Canada constitute an "outbound" distribution made in reliance on a prospectus exemption that requires the filing of this report. If an issuer located outside of Canada determines that a distribution has taken place in a jurisdiction of Canada, include information about purchasers ~~resident~~ in that jurisdiction only."

- *Item 7(f) – Summary of the distribution by jurisdiction and exemption.* We recommend revising the first sentence of the introductory language as follows:

"State the total amount of securities ~~sold distributed~~ and the number of purchasers for each jurisdiction of Canada ~~and foreign jurisdiction~~ where a purchaser ~~resides~~ is located and for each exemption relied on in Canada for that distribution. Also include the total amount of securities sold and the number of purchasers for each foreign jurisdiction if, and only if, the sales to purchasers in that foreign jurisdiction constitute an "outbound" distribution made in reliance on a prospectus exemption that requires the filing of this report."

- *Item 7(g) – Net proceeds to the investment fund by jurisdiction.* We recommend revising the first sentence of the introductory language as follows:

"If the issuer is an investment fund, provide the net proceeds to the investment fund for each jurisdiction of Canada ~~and foreign jurisdiction~~ where a purchaser ~~resides~~ is located. Also include the total amount of securities sold and the number of purchasers for each foreign jurisdiction if, and only if, the sales to purchasers in that foreign jurisdiction constitute an "outbound" distribution made in reliance on a prospectus exemption that requires the filing of this report."

- *Item 8(d) – Compensation Details.* We recommend revising the first sentence as follows:

"Provide details of all compensation paid, or to be paid, to the person identified in Item 8(a) in connection with the distribution to purchasers in Canada. Also include the details of all compensation paid, or to be paid, in connection with the distribution to purchasers in each foreign jurisdiction if, and only if, the sales to purchasers in that foreign jurisdiction constitute an "outbound" distribution made in reliance on a prospectus exemption that requires the filing of this report."

Issuer Information

Co-Issuers and Financing Subsidiaries

Many foreign offerings of debt securities are structured as offerings by multiple co-issuers who are each legally the issuer of a single security. Further, many domestic and foreign offerings of debt securities are structured as an offering by a non-operating financing subsidiary of the issuer where investors rely on the credit of a guarantee from the parent, or other credit supporter, that is not legally the issuer of the security.

We believe that this results in a number of unintended consequences which are not in keeping with the regulatory objectives of the Report:

- Duplicative Reporting – Where two or more co-issuers are offering the same security, the current rules can be interpreted to require a separate Report to be filed by each co-issuer for the same distribution of the same securities. While we understand that some market participants have concluded that this was not the intended result and have reported distributions by co-issuers on a different basis, absent a clarification other market

participants are likely to continue to file multiple reports for each issuer. We submit that this is an undesirable result as it will improperly skew the data that the CSA has stated that it is trying to collect through the Report process, as the amounts raised through exempt distributions will be overstated when the data from filed Reports is aggregated for analysis. We also do not believe that it was the CSA's intention to impose a significantly greater reporting obligation (or, for that matter, fee payment obligation) on transactions that happen to involve securities which are issued by multiple legal entities.

- Inaccurate and Incomplete Issuer Information – We believe that the type of issuer information that the CSA would actually like to collect in Item 5, for the purpose of its analysis and regulation of the exempt market, is the same type of information that investors would rely upon when making their investment decision. For example, assume that Manufacturing Company X creates Finance Subsidiary Y, which then issues securities fully and unconditionally guaranteed by Manufacturing Company X. The offering memorandum on which Canadian investors will base their investment decision will describe the business and affairs of Manufacturing Company X, and investors will be relying on the credit of Manufacturing Company X. In completing the Report, however, the information called for will be information regarding Finance Subsidiary Y, as the issuer of the security. The CSA would therefore receive:
 - A NAICS industry code applicable to the non-operating finance subsidiary, rather than the parent manufacturing company's industry;
 - The number of employees of the finance subsidiary (often zero), rather than the number of employees involved in the parent's operating business; and
 - Information regarding the reporting issuer status, CUSIP number and stock exchange listings for the finance subsidiary, rather than the manufacturing company itself.

We believe that the CSA would actually prefer to gather information regarding the legal entity, or group of legal entities, that investors consider important for the purposes of making their investment decision, rather than the entity that is technically the "issuer" based on the legal structure used.

In order to resolve uncertainty regarding the basis for reporting issuer information in these types of situations, and provide more useful data to the CSA regarding the Canadian exempt market, we propose introducing the concept of a "Primary Issuer" for purposes of the Report.

The instructions to Item 3 of the Report could be revised to provide as follows:

"Provide the following information about the issuer, or if the issuer is an investment fund, about the fund. If the security has more than one issuer, the term "Primary Issuer" means the one issuer or guarantor of the security that you believe investors would most likely consider to be of greatest importance to them in making their investment decision. If the security is issued by a finance subsidiary of a parent providing a guarantee, the term "Primary Issuer" means the parent guarantor. If the security is issued by any other

financing vehicle that does not conduct an operating business, the term "Primary Issuer" means the entity that operates or will operate the business that will employ the proceeds of the offering. In all other cases, the term "Primary Issuer" means the issuer. Provide the full legal name, previous full legal name, website and legal entity identifier of the Primary Issuer in your responses to Item 3, but also include under "Full legal name" the names of any issuer or co-issuer of the security other than the Primary Issuer."

Other references to the "issuer" in Item 3 would then be changed to references to the "Primary Issuer".

The following could be added to the instructions to Item 5:

"If the issuer is an investment fund, do not complete Item 5. Proceed to Item 6. Provide the following information with respect to the Primary Issuer identified in Item 3. When responding to Item 5(b) and Item 5(h), provide your response on the basis of the number of employees and size of assets in the aggregate for the Primary Issuer and any co-issuers or guarantors, or on such other basis as such information has been disclosed to investors."

Other references to the "issuer" in Item 5 would then be changed to references to the "Primary Issuer".

Additional Recommendations Regarding Issuer Information Disclosure

- *Item 5(a) – Primary industry.* It has become apparent since the adoption of the 2016 Amendments that the identification of a NAICS industry code for a particular issuer is more art than science, and that reasonable people may disagree on the particular code that is most closely applicable to a specific issuer. Given the concerns that have been expressed regarding certification requirements, we suggest revising the instructions as follows:

"Provide the ~~issuer's~~ North American Industry Classification Standard (NAICS) code (6 digits only) that in your best judgment most closely corresponds to the Primary Issuer's primary business activity."
- *Items 5(g) and 6(e) – Public listing status/Public listing status of the investment fund*
 - *CUSIP number.* Many issuers have multiple CUSIP numbers. We believe that the CUSIP number the CSA wishes filers to disclose in these sections is not the CUSIP number (if any) for the particular distribution described in the Report (as this information is addressed separately in Item 7 – *Information About the Distribution*) but rather the CUSIP number (if any) for the issuer's "primary" exchange-listed securities (i.e., its common shares). Please consider adding a clarifying instruction to this effect. Please also note that many CUSIP numbers contain letters of the alphabet, and ensure that the field provided for the response will accept all alphanumeric characters.
 - *Exchange name.* We suggest the following amendments to the wording:

"If the issuer/investment fund is publicly listed, provide the name of the exchange on which the issuer/investment fund's equity securities primarily trade. If only debt securities of the issuer trade on an exchange, name any exchange on which they trade..."

- *Item 5(h) – Size of issuer's assets.* The filer is required to disclose the size of the issuer's assets for its most recent financial year-end. We would suggest that this be revised to allow the filer to provide the required information based on the most recently available (annual or interim) financial statements. We also suggest referring to the "Primary Issuer" rather than the "issuer", for the reasons discussed above.
- *Item 8(a) – Name of person compensated and registration status.* We understand law firm practice varies with respect to whether to check "no" or "yes" to the question, "indicate whether the person compensated is a registrant" when the person compensated is an international dealer. Technically, an international dealer is not a registrant, and some firms will check "no". However, unless the "yes" box is checked, the field in which the NRD number may be entered does not appear and cannot be entered, even though international dealers do have NRD numbers. We suggest changing "Indicate whether the person compensated is a registrant." to "Indicate whether the person compensated has an NRD number."

Part II – Further Recommended Changes to the Report to Reduce Compliance Burden

The scope of required disclosure in the Report was significantly expanded by the 2016 Amendments. While we recognize that the CSA has a legitimate regulatory objective in monitoring compliance with the prospectus exemptions and other requirements of the exempt market, and in collecting information relevant to rule and policy development initiatives, we continue to believe that some of the required disclosure may be unnecessary for those objectives and unduly burdensome for market participants. We note that the time, effort and cost of preparing and filing the Report after the 2016 Amendments came into force has increased significantly. We recommend that the CSA reconsider the extent of the need for some of the required disclosure, in the light of seeking an appropriate balance between the twin objectives of investor protection and market efficiency. In particular:

- *Item 5(a) – Primary industry – NAICS industry code.* As noted earlier, there are many different codes that could apply to a particular issuer, as the determination requires the exercise of judgment. We therefore question the utility of collecting this information, as it is likely that people exercising different judgment will report companies that are in fact in the same industry under different codes, and may in fact report the same issuer under different industry codes.
- *Items 5(e) and 6(c) – Date of formation and financial year-end / Date of formation and financial year end of investment fund.* The exact month and date of formation, which otherwise generally is not required disclosure for a non-reporting issuer, is often very difficult to obtain. For issuers whose date of formation is more than, say, one year before the distribution date, we respectfully submit that requiring provision of only the year of formation would suffice for information gathering purposes.

- *Item 9(c) and Paragraph (c) of Schedule 2 – Residential address of each individual.* It is unclear why residential information is required for any individual. Moreover, the purpose of providing information regarding the directors and executive officers of a promoter or control person is not clear. Where an issuer does not have available the residential addresses of its directors, that information cannot necessarily be obtained within the mandated time frame. For example, directors of a non-public issuer could hold their positions as representatives of venture capital firms and the issuer would use only business contact information to communicate with them. There are also privacy issues in certain jurisdictions with disclosing residential addresses. Consequently, we suggest eliminating the requirement to provide residential addresses for any of the listed individuals or, alternatively, stating that such addresses must only be disclosed if available and that they need not be disclosed if any applicable privacy laws prohibit such disclosure.
 - *Paragraph b)3. of Schedule 1.* We suggest that secondary given names should only be required to the extent that they are applicable and available.
-

We wish to thank the CSA for its efforts in developing the Proposed Amendments, and providing us with the opportunity to provide our comments for your consideration. We believe that the Proposed Amendments will be of significant benefit to Canadian capital markets participants, and especially those participating in the extension of U.S. and other global securities offerings to eligible investors in Canada.

If you have any questions regarding this comment letter, please do not hesitate to contact any one of the individuals listed below.

Blake, Cassels & Graydon LLP
Ross McKee
416.863.3277
ross.mckee@blakes.com

Ralph Lindzon
416.863.2535
ralph.lindzon@blakes.com

Davies Ward Phillips & Vineberg LLP
Anthony Spadaro
416.367.7494
aspadaro@dwpv.com

Aaron Atin
416.367.7495
aatin@dwpv.com

McCarthy Tétrault LLP
Andrew Parker
416.601.7939
aparker@mccarthy.ca

Osler, Hoskin & Harcourt LLP
Rob Lando
212.991.2504
rlando@osler.com

Stikeman Elliott LLP
Ken Ottenbreit
212.845.7460
kottenbreit@stikeman.com

September 6, 2017

Submitted via e-mail to comments@osc.gov.on.ca and consultation-en-cours@lautorite.qc.ca

The Secretary
Ontario Securities Commission
20 Queen Street West, 22nd Floor
Toronto, ON M5H 3S8

Me Anne-Marie Beaudoin
Corporate Secretary
Autorité des marchés financiers
800, rue du square Victoria, 22e étage
C.P. 246, tour de la Bourse
Montréal, QC H4Z 1G3

cc: Alberta Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
Manitoba Securities Commission
Financial and Consumer Services Commission (New Brunswick)
Nova Scotia Securities Commission
Superintendent of Securities, Department of Justice and Public Safety, PEI
Securities Commission of Newfoundland and Labrador
Superintendent of Securities, Yukon
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Nunavut

Proposed Amendments to National Instrument 45-106 *Prospectus Exemptions* relating to Reports of Exempt Distribution

Dear Sirs/Mesdames:

The Securities Industry and Financial Markets Association (“SIFMA”)¹ appreciates the opportunity to comment on the proposed amendments to National Instrument 45-106 – *Prospectus Exemptions* published on June 8, 2017 (the “**Proposed Amendments**”) that would amend the report of exempt distribution set out in Form 45-106F1 *Report of Exempt Distribution* (the “**Report**”).

We greatly appreciate your efforts to be responsive to concerns about the unintended effects of the certification requirement and other information requirements in the Report. In that regard, we support the comments set forth in the comment letter submitted jointly by Blake, Cassels & Graydon LLP, Davies Ward Phillips & Vineberg LLP, McCarthy Tétrault LLP, Osler, Hoskin & Harcourt LLP and Stikeman Elliott LLP dated September 6, 2017.

¹ SIFMA is the voice of the U.S. securities industry. We represent the broker-dealers, banks and asset managers whose nearly 1 million employees provide access to the capital markets, raising over \$2.5 trillion for businesses and municipalities in the U.S., serving clients with over \$18.5 trillion in assets and managing more than \$67 trillion in assets for individual and institutional clients including mutual funds and retirement plans. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA). For more information, visit <http://www.sifma.org>.

* * *

Please contact Anthony Sparado of Davies Ward Phillips & Vineberg LLP at 416-367-7494 or aspadaro@dwpy.com or Rob Lando of Osler, Hoskin & Harcourt LLP at 212-991-2504 or rlando@osler.com if you would like to further discuss the issues raised in the comment letters. If you would like more information about how the Proposed Amendments will impact SIFMA and its members, please contact the undersigned at 212-313-1118 or sdavy@sifma.org.

Sincerely,

A handwritten signature in black ink, appearing to read "Sean Davy", written in a cursive style.

Sean Davy
Managing Director
Capital Markets Division
SIFMA
(212) 313-1118
sdavy@sifma.org

INCLUDES COMMENT LETTERS

FAIR

Canadian Foundation *for*
Advancement *of* Investor Rights
Fondation canadienne *pour* l'avancement
des droits *des* investisseurs

September 8, 2017

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

The Secretary
Ontario Securities Commission
20 Queen Street West,
22nd Floor
Toronto, ON M5H 3S8
Sent via e-mail to: comments@osc.gov.on.ca

Me Anne-Marie Beaudoin
Corporate Secretary
Autorité des marchés financiers
800, rue du Square-Victoria, 22e étage
C.P. 246, tour de la Bourse
Montréal (Québec) H4Z 1G3
Fax: 514-864-6381
E-mail: consultation-en-cours@lautorite.qc.ca

RE: CSA Multilateral Notice and Request for Comment – Proposed Amendments to National Instrument 45-106 Prospectus Exemptions relating to Reports of Exempt Distribution

FAIR Canada is pleased to offer comments on the Proposed Amendments to National Instrument 45-106 Prospectus Exemptions published on June 8, 2017 that would amend the report of exempt distribution set out in Form 45-106F1 *Report of Exempt Distribution*.

FAIR Canada is a national, charitable organization dedicated to putting investors first. As a voice for

Canadian investors, FAIR Canada is committed to advocating for stronger investor protection in securities regulation. Visit www.faircanada.ca for more information.

1. General Comments

- 1.1. FAIR Canada is concerned about the CSA's overall regulatory focus relating to the exempt market. The changes currently proposed indicate that the CSA continues to focus on alleviating regulatory burden for exempt market participants rather than taking action to respond to well-documented and extensive problems associated with the exempt market. Addressing these problems must be made a CSA priority. In particular the unacceptable level of non-compliance by exempt market participants and lack of adequate information about the exempt market must be addressed immediately.¹
- 1.2. With respect to the proposed changes to Item 10 of Form 45-106F1 *Report of Exempt Distribution*, FAIR Canada has a comment on the proposed change allowing agents to sign the certification, which is discussed below.

Poor Compliance with Existing Rules

- 1.3. Regulators must take measures to compel compliance with the existing rules that govern prospectus exemptions, as non-compliance is a serious and persistent problem. Non-compliance harms investors and weakens confidence in the exempt market and our capital markets generally. Regulatory resources must be deployed and applied to ensure compliance with existing rules – there is little point in having rules if they are consistently disregarded. In addition, simply placing a heavy emphasis on disclosure cannot provide adequate protection to individual investors.²
- 1.4. Recent reports by CSA members summarizing compliance reviews have emphasized that non-compliance in the exempt market continues to be commonplace. For example, the Alberta Securities Commission's Notice 33-705 *Exempt Market Dealer Sweep* from May 2017 provided results from a sweep of exempt market dealers identifying numerous compliance deficiencies.³

¹ See FAIR Canada, "Re: CSA Notice and Request for Comment on Proposed Amendments relating to Reports of Exempt Distribution" (October 15, 2015), online: <<https://faircanada.ca/wp-content/uploads/2015/10/151015-CSA-Re-Proposed-Exempt-Distribution-Reports-final-signed.pdf>>.

² Behavioural economics research indicates that disclosure is ineffective and may result in unintended and even perverse consequences. Firms and their representatives are responsible for ensuring that Know Your Client, Know Your Product and other rules are met so that the product sale is suitable. In addition, the risk acknowledgement form often does not work and cannot be relied upon as a key mechanism to protect investors in the exempt market. We urge the utilization of other measures to ensure adequate investor protection.

³ Alberta Securities Commission Notice 33-705 *Exempt Market Dealer Sweep* (May 10, 2017), online: <http://www.albertasecurities.com/Regulatory%20Instruments/5331553%20_%20EMD_Project_Staff_Notice%2033-705.pdf> [ASC Sweep]. Out of 69 firms that were reviewed by ASC staff (of which 66 were completed), regulatory action or other steps were taken in 26 cases. In addition, "[ASC staff] identified deficiencies in compliance with regulatory obligations in all areas tested" at 3.

The OSC also produced a report in July 2017 identifying “current trends in deficiencies from compliance reviews” of exempt market dealers.⁴

1.5. The ASC report details numerous failures that range from the nature of the compliance system in place at firms to specific compliance deficiencies related to KYC (Know Your Client) and KYP (Know Your Product) obligations.⁵ The ASC report also highlights a number of other serious issues including:

- Investors with low or medium risk tolerances being invested in high risk exempt market securities without adequate explanation of suitability;
- Investment objectives and time horizons of clients not being consistent with the product;
- Failure to conduct adequate suitability assessments for elderly investors and other vulnerable clients;
- Failure of firms to require clients to disclose whether they were borrowing funds to invest;
- Unsubstantiated claims, misleading information, and inadequate policies, procedures and oversight related to marketing materials;
- Deficiencies with the Relationship Disclosure Information;
- Inadequate identification and response to conflicts of interest, and inadequate conflicts of interest policies and procedures;
- Non-registrants performing registerable activities.⁶

1.6. The OSC’s Annual Summary Report for Dealers, Advisers and Investment Fund Managers identifies some of the same compliance deficiencies raised by the ASC, such as non-registrants trading in securities without being registered to do so, firms not maintaining adequate books and records demonstrating they have conducted their own product due diligence, and registrants processing trades that exceeded the investment limit for the investor.⁷

⁴ OSC Staff Notice 33-748 *Annual Summary Report for Dealers, Advisers and Investment Fund Managers* (July 11, 2017) [OSC Report for Dealers]. The British Columbia Securities Commission also produced a report in June 2014, *Private Placement Review Program*. The Report stated: “staff found that companies have a poor understanding of the exemptions, do not keep adequate records of their private placements, and use professional advisors who do not have specialized knowledge of the securities industry and the private placement market” at 6.

⁵ See ASC sweep at 5-6 and 11-12. Issues with the compliance systems include the failure of the chief compliance officers to adequately perform responsibilities, as well as weaknesses in documenting compliance with internal controls, policies and procedures. Compliance deficiencies related to KYC included inadequate collection and documentation of KYC information and circumvention of the \$10,000 cap applicable to non-eligible investors, while those related to KYP included firms not performing adequate assessment of products recommended to clients.

⁶ ASC sweep at 20-21, 23-29.

⁷ ASC sweep at 48, 51.

- 1.7. The OSC Report also found that dealers were asking their clients to complete incorrect risk acknowledgment forms, with some dealers changing the language of the form despite the wording of these forms being prescribed.⁸
- 1.8. Finally, the OSC Report revealed inadequate collection and documentation of information by registrants demonstrating they took reasonable steps to confirm the purchaser met the conditions of the prospectus exemption they were relying on. There were also instances where the family, friends and business associate ("FFBA") exemption was not being used appropriately – for example, some dealers used this exemption when their client only knew a principal of the issuer through social media or if the client was employed by the issuer.⁹ FAIR Canada warned the OSC when it proposed to add the FFBA exemption of its likely abuse. Such a compliance finding, therefore, comes as no surprise.
- 1.9. The conclusive findings of these two reports demonstrate the unacceptable level of general non-compliance and the broad range of specific compliance deficiencies that continue to be prevalent in the exempt market. FAIR Canada is concerned that, instead of focusing on dedicating compliance/enforcement resources to appropriately address these compliance deficiencies and examining the root or systemic causes that lead to such disregard for the rules, regulators continue to place their efforts on streamlining exempt market requirements. FAIR Canada believes it is incumbent upon CSA members to proactively apply regulatory resources, including enforcement, to address these serious and ongoing compliance concerns. In addition, the appropriateness of certain prospectus exemptions should be rethought.

Lack of Information

- 1.10. Regulators must make obtaining information about the exempt market a priority, as this information is crucial to understanding the exempt market, facilitating more effective regulatory oversight of the exempt market and improving analysis for policy development purposes. Several academics, along with FAIR Canada, have called on regulators to improve their understanding of the exempt market by collecting better information and making that information public.¹⁰

⁸ OSC Report for Dealers at 53.

⁹ OSC Report for Dealers at 52.

¹⁰ Academic papers include Jack M. Mintz, "Muddling up the Market: New Exempt-Market Regulations May do More Harm than Good to the Integrity of Markets", The University of Calgary School of Public Policy SPP Research Papers, v. 7 issue 35 (November 2014), available online: <<http://www.policyschool.ucalgary.ca/sites/default/files/research/mintz-mudlingmarket.pdf>>; and Vijay Jog, "The Exempt Market in Canada: Empirics, Observations and Recommendations", University of Calgary School of Public Policy SPP Research Papers, v. 8 issue (March 2015), online: <<http://www.policyschool.ucalgary.ca/sites/default/files/research/exemptmarkets-jog.pdf>>. FAIR Canada has raised this issue in several of its submissions including its 2012 submission to the CSA on reforms to the accredited investor and minimum amount exemptions from consultation note 45-401 published November 10, 2011, online: <<http://faircanada.ca/wp-content/uploads/2011/01/120229-FAIR-Canada-submission-re-MA-AI-exemptions.pdf>> as well as "Re: CSA Notice and Request for Comment on Proposed Amendments relating to Reports of Exempt Distribution" (October 15, 2015), online: <<https://faircanada.ca/wp-content/uploads/2015/10/151015-CSA-Re-Proposed-Exempt-Distribution-Reports-final-signed.pdf>>. See more recently, Jeffrey MacIntosh "Enforcement Issues Associated with Prospectus Exemptions in Canada", University of Calgary School of Public Policy SPP Research Papers, v 10: 18 (August 2017), though FAIR Canada does not support one of the conclusions presented in this paper, that an SRO be created.

- 1.11. It is important that information is collected and analyzed regarding the recently introduced prospectus exemptions, particularly before more reduction of regulatory burden is contemplated or occurs in the exempt market. We do not know how investors have fared since these new exemptions were introduced, though we do know that firms continue to display non-compliance in many areas. The non-compliance cited above exposes investors to unacceptable risks and/or harm.
- 1.12. As the OSC's 2017 Ontario Exempt Market Report indicates, only certain prospectus exemptions trigger a requirement to file a report, which means that the information gathered from the filings does not represent all exempt market activity.¹¹ The OSC states in the Exempt Market Report that the information gap is worse for small businesses because there are limited or no reporting requirements, with highly fragmented financing sources. The result in the Report is an attempt to analyze small issuers in the exempt market based on the overall correlation between issuer and offering size.¹² This is inadequate: more needs to be done to obtain concrete information and understand small issuers in the exempt market, especially considering the "notable increase in small Canadian issuer activity within the Ontario exempt market in 2016".¹³ More information is also needed to fill in the significant gaps that exist with respect to information on participants in the exempt market that are not small issuers.
- 1.13. Another area of information gathering regulators must focus on are empirical studies relating to the exempt market, as these can be a crucial tool to understanding how investors can be protected. Regulators should analyze how investors are interacting with the exempt market and the kinds of decisions they are making in order to ensure that the exempt market is not exposing them to unnecessary risk and that investor protection mechanisms, such as the risk acknowledgement form, are actually serving the purpose for which they were designed.
- 1.14. Information is also needed as to what kind of returns investors are obtaining through their exempt market investments. For example, are investors obtaining positive returns? FAIR Canada reiterates its call for call for CSA members to conduct empirical studies relating to investors and the exempt market.¹⁴

¹¹ OSC Staff Notice 45-715 *2017 Ontario Exempt Market Report* (June 2017), online: <http://www.osc.gov.on.ca/documents/en/Securities-Category4/rule_20170615_45-715_exempt-market.pdf> at 4 [OSC Exempt Market Report].

¹² OSC Exempt Market Report at 15.

¹³ OSC Exempt Market Report at 16. In addition, although the OSC notes that small issuers account for less than \$300 million (or 1%) of gross proceeds raised in Ontario's exempt market, the OSC estimates that small issuers represented approximately 57% of Canadian issuers involved in Ontario's exempt market between 2014 and 2016: see OSC Exempt Market Report at 15.

¹⁴ See FAIR Canada, "OSC Exempt Market Review: OSC Staff Consultation Paper 45-710 Considerations for New Capital Raising Prospectus Exemptions" (March 8, 2013), online: <<http://faircanada.ca/wp-content/uploads/2013/03/130308.2-draft-submission-re-OSC-exempt-market-review.pdf>> and FAIR Canada, "Ontario Securities Commission Notice and Request for Comments on Introduction of Proposed Prospectus Exemptions and Proposed Reports of Exempt Distribution in Ontario" (June 18, 2014), online: <<http://faircanada.ca/wp-content/uploads/2011/01/FAIR-Canada-submission-re-OSC-Proposed-Prospectus-Exemptions-v1.pdf>> at para 1:10>.

2. Specific Comments related to Current Proposal

- 2.1. The proposed amendments to Item 10 – Certification of Form 45-106F1 would permit an authorized agent to certify the truth and, to the extent required, completeness of the information provided in the report on behalf of the issuer, underwriter or investment fund manager. We would like to see language added to the certificate expressly confirming the authority of the agent to act on behalf of and bind the issuer, underwriter or investment fund manager by completing the certificate. For instance, the wording, “on behalf of the issuer/underwriter/investment fund manager” could be modified to read “pursuant to authority to act on behalf of the issuer/underwriter/investment fund manager” so that certificate wording would begin: “By completing the information below, I certify, pursuant to authority to act on behalf of the issuer/underwriter/investment fund manager...”

We thank you for the opportunity to provide our comments and views in this submission. We welcome its public posting and would be pleased to discuss this letter with you at your convenience. Feel free to contact Frank Allen at 416-214-3443/frank.allen@faircanada.ca or Marian Passmore at 416-214-3441/marian.passmore@faircanada.ca.

Yours Truly,



Canadian Foundation for Advancement of Investor Rights