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January 20, 2014

Dear Mesdames:

**Re: Multilateral CSA Notice 45-312 Proposed Prospectus Exemption for Distributions to Existing Security Holders (the “Proposed Exemption”)**

The Investment Industry Association of Canada (“IIAC” or the “Association”) appreciates the opportunity to comment on the above noted Proposed Exemption. The Association supports regulatory efforts to create exemptions and policies that will assist Canadian companies in raising equity in a cost-efficient and timely manner, while still maintaining effective investor protection.

The Proposed Exemption represents a positive step in this direction. While the IIAC endorses the overall objectives of the Proposed Exemption, we have a few outstanding concerns, as well as some suggestions as to how to address issues that have been raised by particular members.

## **Availability of Proposed Exemption Based on Jurisdiction**

The IIAC is very disappointed to note that the Proposed Exemption is not being proposed as a uniform exemption that would be available nationally and equally to all Canadian issuers. Implementation of exemptions on a piecemeal basis across jurisdictions contributes to regulatory and investor confusion, and discriminates against issuers and investors based solely on their location. Inconsistent regulation ultimately creates unnecessary friction, increasing costs to the industry and all its constituents. Given the national nature of the market, it is essential that the Proposed Exemption be available in all Canadian jurisdictions.

## **Objective and Scope of Proposed Exemption**

Certain members expressed concern that the Proposed Exemption may allow issuers to raise significant amounts of equity from investors without the accompanying due diligence and the additional checks and balances provided by existing securities regulation(s), such as the financial threshold tests in the accreditor investor and \$150,000 exemptions. Without these threshold tests, it is not clear what level of due diligence is expected in respect of the use of the Proposed Exemption for existing investors. Without more clarity about the nature of the due diligence expectation, participation among larger dealers in such financings will be very limited, reducing the potential success of the exemption in reaching retail investors and promoting investment in junior issuers.

In order to achieve the objective of providing a more efficient and lower cost means of raising capital, the fact that the investor: is an existing shareholder, may have been subject to a suitability review, has already undertaken the due diligence necessary to make their initial investment, and would have access to information about the issuer, should be taken into account. As such, we recommend that the suitability and due diligence standards applied to dealers facilitating financings under the exemption be the same as for purchases of the security in the secondary market.

Alternatively, members have suggested that another means of promoting investment in junior issuers would be to permit a certain small percentage of an investor's portfolio to be exempt from suitability requirements, subject to the informed consent of the investor. Currently, certain dealers will not facilitate any transactions in junior issuer securities for their clients, regardless of clients' knowledge and resources, given the speculative nature of such investments, and concern about potential liability from accepting such transactions. Permitting fully informed investors to make such investments through their dealers without subjecting dealers facilitating such investments to potential liability, would assist issuers in raising funds from a broader base of investors, without materially increasing investor risk.

In order to address certain members' concerns about the amount of funds raised under the exemption, IIAC suggests that a yearly limit be imposed which would be the greater of 25% of the issued and outstanding securities of the issuer, or \$3,000,000 - \$5,000,000. Such a limit would allow retail investors to participate in the resurrection of an issuer, and / or funding of a project, while allowing the balance of any needed financing to be obtained through traditional financing methodologies utilizing existing exemptions, or through a prospectus offering.

## Questions

### **2. Should the proposed exemption be available to issuers listed on other Canadian markets?**

Given that the objective of the Proposed Exemption is to permit a broader base of retail investors to participate in the junior market, it should be available to all such Canadian listed issuers, regardless of the exchange on which they are listed. Junior issuers are not confined to listing on TSX-V; many others are listed on CSE and TSX. Although the use of the exemption may be somewhat simpler to administer if it were restricted by the exchange on which the issuer were listed, a more appropriate and fair measure of whether an issuer is an appropriate candidate for the Proposed Exemption would be a market capital test. However, if the CSA is intent on using an exchange based criteria, it would be appropriate to also include CSE, as it is a marketplace primarily aimed at junior issuers.

### **3. Investors will only be able to invest \$15,000 in a 12 month period unless they obtain advice from a registered investment dealer. Is \$15,000 the right investment limit?**

IIAC agrees that there should be a maximum limit of investment for those investing without the protections afforded by having an advisor that is subject to the rigorous Know Your Client (KYC), suitability and Know Your Product (KYP) requirements imposed by IIROC. We agree that this limit should be no more than \$15,000.

### **4. In what circumstances would it be suitable for an investor that is a retail security holder to invest more than \$15,000 in a TSXV issuer?**

There may be circumstances where shareholders have the financial wherewithal and interest in investing more substantial funds in an issuer. Given their existing investment and knowledge of the issuer and its management team, an investor may wish to ensure the ongoing viability of the issuer, or support a new or existing project.

### **5. Do you agree that there should be no investment limit if an investor receives suitability advice from a registered investment dealer?**

If the investor has the financial means, and an IIROC investment dealer has determined that the investment is suitable given the investor's circumstances, such investments should be permitted. IIROC dealers are held to a very high standard in respect of their KYC, KYP and suitability obligations. As noted above, however, it may be appropriate to impose a total financing limit to reflect the objective of the Proposed Exemption. This total financing limit would provide an upper limit on individual participation in the financing. There should not, however, be a limit on individual participation within the total financing limit.

**6. Do you agree that being a current security holder of an issuer enables an investor to make a more informed investment decision in that issuer?**

The IIAC is of the view that being an existing security holder indicates that an investor has already looked at the issuer in sufficient detail to make a purchasing decision, and would have the opportunity to receive all available appropriate continuous disclosure material. We expect that this would make such an investor more informed than those with no previous connection to the issuer. However, depending on the use of proceeds of an offering, the issuer may become significantly different than existing disclosure demonstrates. In such a case, IIAC recommends enhanced disclosure in any press release of a material change in the issuer's business profile.

**7. What is the appropriate record date for the exemption? Should it be one day before the announcement of the offering or should it be a more extended period? If you think it should be a more extended period, what would be the appropriate period of time?**

The appropriate record date should be immediately prior to the announcement of the offering. At this point the existing shareholders have already made their investment decisions, and no further time is required, which may or may not result in increased familiarity with the issuer. A short period would preclude the concerns about inappropriate purchases in the secondary market prior to the offering in order to participate in the offering.

**8. We are currently proposing that the exemption be subject to the same resale restrictions as most other capital raising exemptions (ie: a four month restricted period) However, there are some similarities between the proposed exemption and the rights offering exemption which is only subject to a seasoning period.**

**a. Do you agree that a four month hold period is appropriate for this exemption?**

The IIAC believes the hold period applicable to this exemption should be consistent with those applicable to other exemptions. However, IIAC strongly believes the concept of hold periods should be revisited for all exempt

financings. Given the immediacy of information available to investors and the faster pace at which markets now operate, the 4 month hold period does not serve a useful function, and limits the ability of issuers to raise funds.

**b. Should we require issuers to provide additional continuous disclosure, such as an annual information form?**

IIAC strongly opposes the requirement for additional disclosure, as this would defeat the purpose of the exemption by adding additional time and cost to the fundraising process.

**c. If we were to consider a seasoning period for this exemption, should we consider some of the restrictions that apply under a prospectus-exempt rights offering such as claw-backs limiting insider participation?**

IIAC recommends that restrictions such as claw-backs to insiders not be added unless the offering is over-subscribed, at which point insiders would be limited to dilution protection (ie insiders can participate pro-rata).

**d. If securities offered under the exemption were only subject to a seasoning period, would there be a greater need to ensure investors are made aware of, and have an opportunity to participate in the offering?**

Regardless of whether the securities offered were subject to a seasoning period, hold period or no hold period, in the interest of fairness, it is important that disclosure about the offering be non discriminatory and available to existing shareholders at the same time.

**9. We have not proposed any conditions regarding the structure of the financing, i.e., minimum or maximum price, maximum dilution, or period in which an offering must be completed. We contemplate that the proposed financing would be conducted under standard private placement rules of the TSXV which, among other things, allow pricing at a discount to market price. Is this appropriate or are there structural requirements that we should make a condition of the exemption?**

It is appropriate that pricing be consistent with the existing discount structure applicable to issuers on whatever exchange on which they are listed. This would also assist issuers using the Proposed Exemption in combination with other exemptions when raising funds in excess of the limits. As noted above, it may be appropriate to set limits on the total amount of funds that could be raised under this exemption.

Thank you for considering our comments. If you have any questions, please don't hesitate to contact me.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'S. Copland', written in a cursive style.

Susan Copland