INVESTMENT INDUSTRY ASSOCIATION OF CANADA
ASSOCIATION CANADIENNE DU COMMERCE DES VALEURS MOBILIÈRES

June 18, 2014

Susan Copland, LLB, BComm
Director
scopland@iiac.ca

Denise Weeres
Manager, Legal, Corporate Finance
Alberta Securities Commission
250 – 5th Street S.W.
Calgary, AB T2P 0R4
Denise.weeres@asc.ca

Me Anne Marie Beaudoin
Corporate Secretary
Autorite des marches financiers
800, square Victoria 22e etage
CP 246, tour de la Bourse
Montreal QC H4Z 1G3
e-mail: consultation-en-cours@lautorite.qc.ca

Dear Mesdames:

Re: Proposed Amendments to National Instrument 45-106 *Prospectus and Registration Exemptions* Relating to the Offering Memorandum Exemption and Reports of Exempt Distribution (the "Proposed OM Exemption")

The Investment Industry Association of Canada (the "IIAC" or the "Association") appreciates the opportunity to comment on the Proposed OM Exemption.

The IIAC supports the commissions' objective of facilitating capital raising for issuers at different stages in their growth and business cycles, while maintaining an appropriate level of investor protection and regulatory oversight. We are, however, extremely concerned and disappointed that the Proposed OM Exemption is not part of a coherent and coordinated CSA initiative to create a nationally harmonized prospectus exemption regime. As you are aware, on the same day that the Proposed OM Exemption was published, the OSC published

its proposed version of an OM exemption as well as several other proposed prospectus exemptions, some of which exist in slightly different forms in other jurisdictions.

The result is a confusing and complex patchwork of proposed and existing exemptions which are intended to achieve the same objectives, but do so in a manner which would potentially leave Canada with four different OM exemptions, and a series of other similar, but not entirely consistent capital raising exemptions.

The complexity and inefficiency introduced into the Canadian capital markets through this provincial approach cannot be justified, and runs counter to the philosophy of creating efficient and effective Canadian markets. Issuers attempting to raise capital on a national basis (or even in more than one province) will be forced to navigate inconsistent and different criteria, notwithstanding that they may be using what appears to be the same exemption in various jurisdictions. This is not an approach which could in any way serve the issuers, investors or any other stakeholders in the Canadian capital market.

It is critical that the development and implementation of the Proposed OM Exemptions and Proposed ED Reports be undertaken in cooperation with the other Canadian jurisdictions to create a consistent exemption scheme across Canada. There are no fundamental differences between investors in different provinces that would justify the confusion and inefficiency of the conflicting exemptions.

With the proviso that the priority for the Proposed OM Exemption and Proposed ED Report is national harmonization, we offer the following suggestions in respect the proposals. These suggestions are consistent with the feedback that IIAC provided to the OSC in relation to its proposed OM exemption.

The OM exemption that currently exists in certain provinces is not well utilized. This is due to the fact that there is not a significant cost savings compared to a prospectus financing. Concerns about liability have led to an increase in due diligence disclosure and legal review to prospectus-like levels. Given the marginal difference in costs, issuers will generally attempt to use another prospectus exemption where possible, or undertake a prospectus financing, which appeals to a much wider investor audience and does not have the restrictions inherent in the OM exemption. In general, proposals that add more requirements to the existing OM exemption, or reduce the number of eligible investors will further reduce the use of this exemption.

To that end, the Proposed OM Exemption should remain open to all types of securities. Where more complex securities are involved in an offering, the disclosure (including risk disclosure) should be more robust. The parameters of the existing document allow for such fulsome disclosure, so there is no need to restrict the Proposed OM Exemption in this regard. If a prospective investor is provided with sufficient disclosure to understand the nature of the offered security (including risks and unique features of the security), any security type should be available under the offering.

In addition, there should not be a prohibition in respect of registrants that are related to the issuer. These circumstances should be dealt with through disclosure of conflicts and risk factors, rather than prohibition.

In respect of the proposed income and asset thresholds, IIAC members do not have a strong view on which asset test is more appropriate. The key criteria is that the asset test be consistent among jurisdictions with an OM exemption.

Given the regulatory obligations (KYC, KYP and Suitability) imposed on IIROC dealers, it is appropriate that an investor be able to be qualified as an eligible investor by obtaining advice from an IIROC dealer. This is a much stronger investor protection mechanism than an income or asset test, which are at best, proxies for ability to withstand loss and do not address suitability.

The proposed investment limits are appropriate in respect of non-eligible investors, and those who qualify as eligible investors using asset and income tests. As noted above, the asset and income tests are proxies (however imperfect) for the investor's ability to withstand loss. Advice from an IIROC dealer takes into account the suitability of the investment for the investor in light of their total financial portfolio and the specific characteristics of the security being offered. As such, limits are not necessary as the IIROC advisor and the client should be able to determine what level of investment is appropriate.

The IIAC supports regulatory efforts to facilitate capital raising, particularly for small issuers in the Canadian market. In developing proposals to achieve that objective, it is critical that regulators work together to create a harmonized regime that allow issuers to access capital in an efficient and cost effective manner.

Thank you for considering our feedback. We would be pleased to discuss this matter further with you. If you have any questions, please do not hesitate to contact me.

Yours sincerely,

Susan Copland