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

701 West Georgia Street | Suite 1500
Vancouver, BC | V7Y 1C6
604.637.1677 | www.iiac.ca

www.iiac.ca

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

September 20, 2019

Denise Weeres
Director, New Economy
Alberta Securities Commission
New.economy@asc.ca

Dear Ms. Weeres:

Re: ASC Consultation Paper 11-701 *Energizing Alberta's Capital Market* (the "Paper")

The Investment Industry Association of Canada appreciates the opportunity to comment on the Paper. We agree that the health of Alberta's capital market is a key factor in the strength of the Canadian capital markets and the Canadian economy.

As such, we support efforts of the Alberta Securities Commission to identify and mitigate factors within its purview, that may create barriers to growth in the capital markets in particular and the economy in general, and to identify opportunities to create policies or programs to enhance the vibrancy of the capital markets in Alberta.

We are pleased that the ASC is not only examining the conventional aspects of securities regulation in its efforts, and also looking to how it can use and adapt regulation to accommodate and leverage new technology that can "improve capital market efficiencies, reduce costs, and provide investors with better information and analysis." The role of technology is changing the nature of how the capital markets are functioning, from the client facing perspective, as well as in respect of operations. It is critical that regulation adapt to the new realities of how clients interact, and expect to be served by financial service providers, and the way in which technology based solutions can be regulated to better serve these investors while maintaining a level playing field among service providers, so that clients are not encouraged to engage in regulatory arbitrage when seeking their financial solutions.

Existing regulatory burden reduction efforts

We recognize and support the ASC's on-going regulatory burden reduction efforts as articulated in the Paper. We identified certain of these efforts as important in our March 1, 2019, response to the Ontario Securities Commission consultation on burden reduction, which is attached to this submission.

Most of the benefits to be achieved by the reduction of regulatory burden must be done on a national level, owing to the national nature of such regulation, and the interjurisdictional nature of the capital markets. As such, individual provincial efforts to reduce the regulatory burden must be taken in a coordinated manner with all Canadian regulators in order to be effective. Piecemeal regulatory changes will not effectively reduce the burden, and may in fact create inefficiencies where they create differences among jurisdictions.

In particular, we have either submitted, or will be submitting comments supporting the initiatives described below, further to and in certain cases, independent of, the CSA request for comment process.

(a) review of potential alternatives to the prospectus offering system for public companies;

(b) facilitating at-the-market prospectus offerings through the short-form shelf prospectus system and liberalizing existing conditions;

(c) revisiting the concept of "primary business" which triggers a requirement for financial statements in a prospectus;

(d) modifying the requirement for a business acquisition report and the accompanying financial statements when a public company acquires or proposes to acquire another business (this is in addition to the adjustment in the threshold that was previously introduced for publicly traded "venture" issuers);

(e) revisiting certain continuous disclosure requirements including eliminating duplicative requirements and focusing required disclosure;

(f) enhancing the ability to electronically deliver documents to investors;

(g) revising the market data pricing requirements to require specific comprehensive justification of fees, and facilitate more transparency in increasing and creating new market data fees.

We also reiterate our concerns with certain elements of the Client Focused Reforms as noted in our response dated October 18, 2018, to the June 21, 2018 proposals. In particular, we are concerned that the proposed KYP requirements will present significant challenges for the industry by significantly limiting firms' discretion in how they evaluate securities on their shelves. As we noted in our letter, the extensive, prescriptive list of factors to consider, combined with language that appears to require a security-by-security analysis would make it impractical, if not impossible for many firms to maintain open shelves with sufficient product choice to serve a variety of clients. This would negatively impact clients' portfolios, access to advice, product innovation and the capital-raising ability of Canadian firms, particularly venture issuers with higher risk profiles. Given that the existing suitability requirement would ensure that the advisor understands any specific product recommended to a client, the obligations of individual advisors to have a high-level of understanding of all the products on a firm's shelf is unrealistic and unnecessary, particularly when such products may be outside the advisor's proficiency or ability to sell. Implementation of the proposed provisions would represent a significant burden, contrary to the objective of energizing Alberta's capital markets.

Brainstorming Ideas

We have the following responses to the Brainstorming Ideas proposed in the Paper.

(a) Informational resource for Alberta start-ups and early stage businesses on capital raising options

We support the idea for the ASC to provide entrepreneurs with information on its website to help them navigate the capital raising process. Initiatives such as developing and posting easily fillable forms in forms in Word and/or HTML format would add efficiencies to tasks that do not require expertise.

We also support the creation of industry standard master subscription agreements for private financings, provided they are not mandatory, as issuers and dealers will require flexibility to design such forms to accommodate the circumstances of each deal. Providing basic template agreements will increase efficiencies and reduce professional costs for issuers, while helping to ensure that agreements will be acceptable to regulators.

We are concerned that the proposal of the ASC to maintain a list of professional advisors on its website may result in liability or costly civil action should problems arise in the relationship between a listed advisor, or if the advisor is listed despite having civil or criminal claims against them. While the ASC may not be found liable in such circumstances, the resources that may be required to dispute such claims would not justify any convenience of providing a listing. Information regarding professional advisors is readily available on the internet and through other sources, and is not required from a regulator, where listing may imply endorsement.

(b) Informational resources for investors investing in Alberta businesses

It would be helpful to provide easy access to the ASC's existing database of exempt financings to enable insight on the size and nature of financings being reported to the ASC. Currently the British Columbia Securities Commission (BCSC) provides this type of data on their website. We recommend that the ASC use the BCSC database as a model for such disclosure.

We do not, however, believe it would be advisable to require additional information that is not currently required to be filed with the ASC in respect to private financings. There may be, in certain circumstances, sensitivity about publication of this information from a confidentiality or competitive perspective. We recommend allowing for optional disclosure, which would, if provided, assist firm in establishing pricing for CRM reporting where information is stale-dated.

(c) Expanding the accredited investor exemption to include educated, experienced investors; and

(d) Addressing the compliance challenges associated with confirming accredited investor status

It would be helpful to expand the accredited investor exemption to include educated, experienced investors, provided the standards are clear and easy to administer. Previously, we have expressed concerns about the compliance burden and uncertainty in ascertaining whether investors meet the proposed standard. If, however, technology could be leveraged such that investors could answer a set of questions, and provide relevant information which would ascertain their compliance with criteria set by regulators, and allow them to self-certify based on their answers, this would be very helpful in opening up the exemption to qualified investors, without imposing an undue burden and risk on dealers and issuers.

The expanded qualifications would have to be clear and verifiable, such as professional accreditation, or education to which the investor would certify. In order to ascertain experience, it may be possible for the technology to require the investor to undertake some sort of test or go through questions that would help determine if they should be accredited.

It is important that this process be administered independently, and that dealers would not be responsible for making this judgment. Any addition of a limitation on the amount that could be invested by such an investor would add complexity to the process, particularly if it is based on a percentage of portfolio test. Given that investors often hold their assets at different institutions, it could be quite difficult to ascertain whether the client would meet that criteria. In addition, the percentage is subject to fluctuations in the value of the portfolio and the asset in particular, so it would be impractical to administer such a test.

The expansion of the accredited investor exemption is appropriate, and would not in any way diminish the dealers' KYC or suitability responsibilities, but would only allow such investors to participate in financings where they meet the criteria of the exemption and where the investment is suitable for the client.

(e) Registration exemption for finders

The IIAC does not support a registration exemption for finders. Based on the results of regulatory reviews, permitting individuals that are not registered, and those subject to lower standards and oversight, such as exempt market dealers to act in that capacity, puts investors at risk. Allowing non-registrants, with no proficiency or professional obligations to deal with investors promotes a non-level playing field. "Finders" do not have suitability or KYC obligations, and despite a prohibition on making investment recommendations, past experience with the Northwest Exemption and in respect of EMD reviews has shown that investor protection is compromised by permitting such individuals to interact with retail investors, as proper screening of exemption availability and suitability and is often not undertaken by the finder, the EMD or the issuer. Where investors (particularly retail investors) are involved, it is important that IIROC registrants with appropriate proficiency and oversight act as intermediaries.

(f) Reducing compliance costs for registered dealers when dealing with accredited investors

We do not support waiving KYC and suitability exemptions for accredited investors with additional investing experience. As noted in (d) above, we support a technology facilitated self-certification to confirm an investor's status as accredited. This would reduce compliance costs by eliminating the completion, review and sign-off procedures applicable to the current long form exemption questionnaire.

The investor status as an accredited investor, even with additional experience, should not exempt them from the protections afforded by the advisors' KYC and suitability obligations.

(g) Addressing other registered dealer compliance burdens

We do not support the proposal to permit part-time compliance officers. The current regulatory requirements are too significant for a part time individual to oversee, and the requirement for a CCO to be available during market hours is incompatible with a CCO acting for multiple firms.

We support any means of improving coordination among CSA jurisdictions in respect of exam schedules for dealers, and increasing the reliance by CSA jurisdictions on each other. Existing differences in regulation and procedures do not contribute to investor protection, and add unnecessary friction and inefficiencies to what should be a seamless national process.

We also support measures to eliminate the need for dealers to provide documents to multiple regulators. As recommended in our submission on CSA Systems Redevelopment, the NRD should be configured to develop a registrant portal to allow both regulators and firms to view and upload documents for examinations and other sharing purposes.

We also believe it would be beneficial to accept alternative means of demonstrating proficiency where applicable. This would assist the industry in attracting qualified people to the industry. However, it is important that regulators provide clear guidelines of what factors could support alternative proficiency standards.

In order to provide more consistent regulation and oversight for exempt market dealers in respect of their dealings with investors, it would be helpful to develop a rulebook for exempt market dealers; and, as importantly, provide regular audits to ensure compliance with the rulebook.

(h) Facilitating angel investment funds

We re-iterate our position that crowdfunding platforms represent a significant and unacceptable risk to the investing public, even if the investors are accredited investors. Given the lack of oversight, KYC and suitability obligations and in-depth review of platform providers, we believe this means of capital raising invites abuse, and will have a negative effect on investor confidence in the market in general. We do not believe that such platforms have been successful in developing viable, legitimate issuers, and as such, the risk does not justify the potential benefits.

(i) Facilitating the development of a retail, publicly-traded fund focused on innovative businesses

We support the development of such a fund, ideally as a public/private investment fund with public funds invested alongside the private contributions. This fund should be managed by professional fund managers rather than government employees, to ensure that the due diligence is objective and that there is no perception of political influence. This would provide retail investors with confidence and incentive to invest.

(j) Further facilitating global markets

Rather than focusing on foreign jurisdictions, barriers to capital flow in Canada should be addressed. In particular, the translation requirement for prospectuses filed in Quebec represents a significant barrier to capital raising in Canada. The time and cost burden of the translation requirement deprives issuers of the full range of Canadian funding opportunities, and investors in Quebec of the ability to participate in opportunities provided to other Canadians.

(k) Facilitating a semi-public market that allows secondary retail trading by non-public companies

Given the size of Canadian markets, it is unlikely that there will be a critical mass to make this a success. Past efforts undertaken by Canadian marketplaces have not met with success, partly due to the administrative and cost burdens put on participating dealers.

(l) Exploring enhanced institutional liquidity for private markets

In general, if issuers seek liquidity, they will move to fully public markets, and do not require this intermediate step.

(m) Fostering crowdlending and peer-to-peer lending

We reiterate our concerns about investor protection, expressed in previous submissions regarding crowdfunding platforms. Although crowdfunding may be appropriate for small ventures, where there are individual investment limitations, the lack of significant oversight of the crowdfunding platform operators presents a significant risk to investors in particular and market integrity in general. Permitting platforms to operate without significant oversight, while investors do not have the benefit of registrants evaluating suitability represents a material loophole in the regulatory system that could become a haven for fraudulent activity and investor losses. This would diminish the integrity and confidence in the capital markets.

Additional considerations

Members suggested that as part of the project to examine electronic delivery, the requirement for trade confirmations be examined in the context of an access = delivery model. Investors should be able to establish whether they choose to receive trade confirmations, or if they wish to utilize their online access to track trades in their account. A choice of an electronic notice prompting investors to examine

their accounts (notice = delivery) or a straight access = delivery model should be permitted, with the investor being able to request a full trade confirmation with all the applicable information at any time.

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

Yours sincerely,

Susan Copland