PRIVATE CAPITAL MARKETS ASSOCIATION OF CANADA

THE NATIONAL VOICE OF EXEMPT MARKET DEALERS, ISSUERS AND INDUSTRY PROFESSIONALS

E-MAIL

June 30, 2014

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

Attention: John Stevenson, Secretary
E-mail: comments@osc.gov.on.ca

Dear Sirs and Mesdames:

Re: Proposed Amendments to National Instrument 45-106 *Prospectus and Registration Exemptions*
Companion Policy 45-106CP *Prospectus and Registration Exemptions*
Proposed Amendments to OSC Rule 45-501 *Ontario Prospectus and Registration Exemptions*
Proposed Multilateral Instrument 45-108 *Crowdfunding*
Companion Policy 45-108CP *Crowdfunding*
Proposed Form 45-106F10 *Report of Exempt Distribution for Investment Fund Issuers (Alberta, New Brunswick, Ontario and Saskatchewan)*
Form 45-106F11 *Report of Exempt Distribution For Issuers Other Than Investment Funds (Alberta, New Brunswick, Ontario and Saskatchewan)*
(collectively, the Proposed Amendments)

This comment letter is submitted by the Private Capital Markets Association of Canada (formerly, the Exempt Market Dealers Association of Canada) (the **PCMA**) in response to the request for comments published by the Ontario Securities Commission (the **OSC**) dated March 20, 2014 in connection with the Proposed Amendments.

We have held Town Hall meetings and solicited feedback from industry participants in Toronto, Calgary, Vancouver, Saint John and Montreal and have spoken with various members of the Canadian Securities Administrators (**CSA**) regarding the Proposed Amendments. We thank those CSA members who have engaged in this discussion with us.

As you know, the PCMA had our 2014 Annual Conference at the Board of Trade in Toronto, Ontario on June 2, 2014 (the **PCMA Conference**). We had over 320 attendees and it was extremely well received by all those who attended. We greatly appreciate and would like to thank OSC Chair The Honourable Howard I. Wetston for providing an opening keynote speech at the PCMA Conference.

Additionally, we would like to thank OSC Vice Chair James Turner and Joanne Matear, Manager, Corporate Finance, for participating in a dialogue on the OM Prospectus Exemption along with other key industry leaders. We believe that having such public dialogue increases the education and awareness of key regulatory changes and provides different perspectives as we seek to strike the right balance between investor protection and fair and efficient capital markets.

WHO IS THE PCMA?

The PCMA is a not-for-profit association founded in 2002 to be the national voice of exempt market dealers (**EMDs**), issuers and industry professionals in the private capital markets across Canada.

PCMA plays a critical role in the private capital markets by:

- assisting its hundreds of dealer and issuer member firms and individuals to understand and implement their regulatory responsibilities;
- providing high-quality and in-depth educational opportunities to private capital markets professionals;
- encouraging the highest standards of business conduct amongst its membership across Canada;
- increasing public and industry awareness of the private capital markets in Canada;
- being the voice of the private capital market to securities regulators, government agencies, other industry associations and the public capital markets;
- providing valuable services and cost-saving opportunities to its member firms and individual dealing representatives; and
- connecting its members across Canada for business and professional networking.

Additional information about the PCMA is available on our website at: www.pcmacanada.com

WHO ARE EXEMPT MARKET DEALERS?

EMDs are fully registered dealers who engage in the business of trading in securities to qualified exempt market clients. EMDs are subject to full dealer registration and compliance requirements and are directly regulated by the provincial securities commissions. The regulatory framework for EMDs is set out in National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations (**NI 31-103**) and it applies in every jurisdiction across Canada.

EMDs must satisfy substantially the same "Know-Your-Client" (**KYC**), "Know-Your-Product", (**KYP**) and trade suitability obligations as other registered dealers who are registered investment dealers and members of the Investment Industry Regulatory Organization of Canada and mutual fund dealers and members of the Mutual Fund Dealers Association of Canada. NI 31-103 sets out a comprehensive dealer regulatory framework (substantially the same for all categories of dealer) which requires EMDs to satisfy a number of regulatory obligations including:

- educational proficiency;
- capital and solvency standards;
- insurance;
- audited financial statements;
- KYC, KYP and trade suitability;
- compliance policies and procedures;
- books and records;
- trade confirmations and client statements;
- disclosure of conflicts of interest and referral arrangements;
- complaint handling;
- dispute resolution;
- maintenance of internal controls and supervision sufficient to manage risks associated with its business;
- prudent business practices requirements;
- registration obligations; and
- submission to regulatory oversight and dealer compliance reviews.

EMDs may focus on certain market sectors (*e.g.*, oil and gas, real estate, mining or minerals, technology, venture financing, etc.) or may have a broad cross-sector business model. EMD clients may be companies, institutional investors, accredited investors or investors who purchase exempt securities pursuant to an offering memorandum or another available prospectus exemption.

EMDs provide many valuable services to small and medium size enterprises, large businesses, investment funds, merchant banks, financiers, entrepreneurs, and individual investors, through their ability to participate in the promotion, distribution and trading of securities, as either a principal or agent.

PCMA'S COMMENTS ON THE PROPOSED AMENDMENTS

OM PROSPECTUS EXEMPTION

General

The PCMA is encouraged by the OSC's willingness to consider and embrace new capital raising exemptions at a time when Ontario is experiencing not just a start-up and SME funding gap but more specifically, a prospectus exemption gap. We believe there are insufficient prospectus exemptions available in the Province compared to other Canadian jurisdictions.

We appreciate the tremendous effort OSC staff have put into seeking industry views and soliciting feedback on its efforts to help Ontario's eco-system of capital raising through the introduction of new prospectus exemptions. We are considerably pleased with Ontario's serious consideration of the OM Prospectus Exemption which we believe, when adopted, will seriously impact capital raising in Ontario, subject to our comments below.

However, the PCMA strongly believes that the Canadian Securities Administrators (the **CSA**) need to accelerate the adoption of a fully harmonized set of securities regulations across the country, particularly given the recent examples of significantly disharmonized prospectus exemption changes. This causes unnecessary complexity for market participants, is a significant barrier to capital raising, and a burden on issuers through increased cost of capital.

Canada's multi-jurisdictional environment makes our Canadian capital markets significantly more complex and costly, especially for SMEs, and we ask that you take this into consideration when you consider how you work with other CSA members on regulatory reforms such as this.

* * *

Below are the responses from the PCMA with respect to the specific questions you have asked. We have reproduced the questions for ease of reference.

1) We note that the existing OM Prospectus Exemption available in other CSA jurisdictions has not been frequently used by start-ups and SMEs. (a) Have we proposed changes that will encourage start-ups and SMEs to use the OM Prospectus Exemption? (b) What else could we do to make the OM Prospectus Exemption a useful financing tool for start-ups and SMEs?

(a) The PCMA believes the OM Prospectus Exemption is best suited for non-start-up issuers and its use or non-use is likely a factor of knowledge and awareness of this new capital raising exemption in the SME community. Once adopted, we encourage the OSC to focus on education and awareness of the OM Prospectus Exemption in those industries and sectors where it is encouraging its use.

We believe the OSC should not narrowly focus on SMEs to the exclusion of other issuers who have relied or would like to rely on the OM Prospectus Exemption. We remind the OSC that non-SMEs issuers have raised significant amounts of capital under the OM Prospectus Exemption in all jurisdictions in Canada (other than Ontario) where it has been in place for years. Major changes, as proposed by the OSC, severely limit such capital raising which in turn will impact investors as well as our economy.

PCMA believes Ontario needs to follow, as closely as possible, the Alberta form of OM Prospectus Exemption that includes an eligible investor test. The many changes the OSC has added to its proposed variation of the Alberta model is creating something completely different than what presently exists. For example, the proposed prohibitions on related issuers and investment funds and the introduction of investment caps, as discussed elsewhere in this letter, is a fundamental and radical shift in how this OM Prospectus Exemption will be used or not. We are of the view that perhaps the OSC has introduced too many investor protection safeguards at the expense of fair and efficient capital markets that, in their totality, may limit the use of the OM Prospectus Exemption more than is currently appreciated or expected by the OSC.

In terms of start-ups, the PCMA does not believe that the proposed changes to the OM Prospectus Exemption will significantly increase the use of the OM Prospectus Exemption by these types of issuers. The cost of preparing the OM offering

documentation and required audited financial statements, as experienced in other CSA jurisdictions, is too prohibitive for small and early stage issuers.

PCMA is supportive of the OSC adopting the Start-Up Exemption being considered by five other CSA members, and we have submitted our respective comments letter to them. We encourage the OSC to review the results of that comment letter process. Although we would generally support the OSC introducing the Start-Up Exemption in Ontario, we strongly disagree with an aspect of the current proposal where portals relying on the Start-up Exemption are not regulated. The PCMA firmly believes that all funding portals as market intermediaries must be regulated, and in substantially the same manner that the OSC proposes to regulate funding portals under MI 45-108.

(b) The OSC can make the OM Prospectus Exemption significantly more useful as a financing tool by providing smaller issuers with exemptive relief from the audited financial statements for smaller financings (*i.e.,* less than $ 1 million) as certain CSA members did in December 2012 when they published Multilateral CSA Notice 45-311 *Exemptions from Certain Financial Statement-Related Requirements in the Offering Memorandum Exemption to Facilitate Access to Capital by Small Businesses*.

Each CSA member (other than British Columbia who wanted to study it further and Ontario which does not have the OM Prospectus Exemption) issued harmonized interim local orders (the **Blanket Orders**) that provides relief from the requirement to have audited financial statement requirement and using Canadian GAAP applicable to publicly accountable enterprises *provided that*:

(i) the issuer and related issuers raise no more than $500,000;

(ii) no investor invests more than $2,000 in any 12-month period;

(iii) the issuer is not a reporting issuer, investment fund, mortgage investment entity or real estate issuer;

(iv) the issuer does not distribute complex securities; and

(v) the offering memorandum (the **OM**) contains a bold warning on the front page.

The PCMA submits that the OSC should include the exemptive relief set out in the Blanket Orders as part of the OM Prospectus Exemption instead of requiring issuers to seek exemptive relief in the Province.

Notwithstanding, the PCMA believes the substance of the Blanket Orders, and any adoption of these by Ontario, should be amended so that:

(i) there is no limit on the amount that can be invested by an investor in any time period when a dealer is involved; and

(ii) the minimum threshold for when an audit is required should be increased from $500,000 to $1 million and only after $250,000 has been expended.

Issuer Qualification Criteria

2) We have concerns with permitting non-reporting issuers to raise an unlimited amount of capital in reliance on the OM Prospectus Exemption. (a) Should we impose a cap or limit on the amount that a non-reporting issuer can raise under the exemption? (b) If so what should that limit be and for what period of time? For example should there be a "lifetime" limit or a limit for a specific period of time such as a calendar year?

(a) No, the OSC should not impose a cap or limit on the amount that a non-reporting issuer can raise under the OM Prospectus Exemption. Many issuers, including SMEs, do not want to go public for various reasons. They would prefer to raise capital under the OM Prospectus Exemption and not under a prospectus given the inherent costs associated with preparing and filing a prospectus, as well as ongoing reporting requirements.

We note that the OM Prospectus Exemption is not typically used for start-up and early stage financings. The amount of capital required for growth and expansion capital vary widely by industry sector, stage of development and business strategy. Indeed, the cost of compliance when relying on the OM Prospectus Exemption is significant. To impose caps would further dissuade issuers from relying on it.

(b) The OM Prospectus Exemption has been used extensively in Western Canada in multiple industries by issuers at various stages and offering sizes, with no limits on capital raised. We believe Ontario should follow the same approach. Accordingly, we agree with the OSC's proposal that there should be no issuer caps and no limits on

the number of times an issuer can utilize the OM Prospectus Exemption, in any time-frame.

3) a) What type of issuer is most likely to use the OM Prospectus Exemption to raise capital? (b) Should we vary the requirements of the OM Prospectus Exemption to be different (for example, disclosure requirements) depending on the issuer's industry, such as real estate or mining?

(a) We believe a prospectus exemption should be available to any issuer in any sector and not necessarily tailored for any particular issuer or industry.

How frequently the OM Prospectus Exemption is used or not and by which types of issuers and/or sectors is result of a number of factors. For example, certain sectors such as real estate, may use the OM Prospectus Exemption more frequently than other sectors since EMDs are more inclined to sell a security that provide investors with regular distributions than one that does not (*e.g.,* a technology or manufacturing issuer that provides no distributions and is purely an equity investment opportunity). EMDs sell securities that are in demand by investors and the use, or non-use, of the OM Prospectus Exemption may be more a reflection of such dynamics. Potentially, a lack of knowledge about the exemption and/or the cost of preparing an OM may also dissuade certain types of issuers from using the OM Prospectus Exemption.

As stated in #1 above, we do not believe that start-ups will make significant use of the OM Prospectus Exemption since the cost of compliance is too great. In order to improve access to capital for SMEs, we believe the OSC should include the exemptive relief set out in the Blanket Orders, as part of the proposed OM Prospectus Exemption and also consider adopting the Start-Up Exemption - provided that the funding portal is regulated in a manner similar to the way the OSC contemplates regulating funding portals under proposed MI 45-108.

(b) Yes, the OSC should vary the disclosure requirements of the OM Prospectus Exemption to be tailored to a particular issuer's industry. Different industry sectors would absolutely benefit from additional rules and guidance by the OSC on specific disclosure requirements for certain industries or securities.

For example, when real estate is sold with a management contract where an investor receives regular distributions, such arrangements are typically viewed as an "investment contract" which is a type of security. Alberta, for example, has tailored disclosure in such instances for what are called real estate securities. We believe the OSC, the ASC and other CSA members should update and review such disclosure and provide uniform disclosure requirements for real estate securities. We also believe additional rules and guidance should be provided for mining, real estate development, early stage and other types of issuers.

Additionally, disclosure guidelines are needed where a Topco raises capital under a trust or limited partnership vehicle, which then provides the proceeds to an underlying operating company in exchange for debt and/or equity in Bottomco. Additional guidance is required for these indirect offering structures in the private capital markets.

OM disclosure is about the exercise of judgment about what information is required to be included in an OM and what is not. We find that different CSA members have different views on the length and quality of disclosure, which also differs between the corporate finance/investment fund groups within a given CSA member, and their respective compliance and enforcement branches. Issuers and professionals are in need of additional OM disclosure guidance from the CSA, including the OSC, since no issuer wants to be cease traded for inadequate disclosure and be required to offer investors rescission rights if the issuer wants to sell securities again.

Notwithstanding this, the OSC should not delay implementing the OM Prospectus Exemption in the interest of developing these industry-specific disclosure requirements. We recommend these be considered as a phase two of the Exempt Market Review initiated by the OSC and broadened to include other CSA members.

4) We have identified certain concerns with the sale of real estate securities by non-reporting issuers in the exempt market. As phase two of the Exempt Market Review, we propose to develop tailored disclosure requirements for these types of issuers. Is this timing appropriate or should we consider including tailored disclosure requirements concurrently with the introduction of the OM Prospectus Exemption in Ontario?

The PCMA recognizes that the OM Prospectus Exemption introduces a new way to raise capital in Ontario and there will be a learning curve for both Ontario issuers and the OSC. However, the

need for increased capital is more critical now than ever and we note it has already been almost two years since the OSC began considering new ways of raising capital. We appreciate necessary pace of interconnected policy change however, for issuers in dire need of capital this process is already too long. Accordingly, the PCMA recommends against any delay in Ontario's adoption of the OM Prospectus Exemption, and we agree that any industry/sector specific disclosure guidance should be developed in phase two of the Exempt Market Review.

Types of Securities

5) We are proposing to specify types of securities that may not be distributed under the OM Prospectus Exemption, rather than limit the distribution of securities to a defined group of permitted securities. Do you agree with this approach? Should we exclude other types of securities as well?

Subject to our response in question 6 below, the PCMA understands the OSC's approach to this matter, however, we are concerned that this creates more disharmony among the CSA jurisdictions.

We do not believe the OSC should restrict convertible securities (*e.g.*, convertible debentures), conventional warrants and rights and special warrants, which are used extensively by SMEs raising capital under existing prospectus exemptions. In start-up and early stage financings, convertible securities and warrants are commonly used to defer complex valuation issues (*e.g.,* during seed stage or angel-led financings, bridge financings, etc.) or to "sweeten" the opportunity for early-stage investors that participate in higher risk financing rounds.

We do not believe that any type of securities should be excluded from being sold under the OM Prospectus Exemption. With proper disclosure under the OM, any kind of security, even those which are complex, or in fact novel, should be eligible for sale. SMEs using the OM Prospectus Exemption need flexibility in designing their product offering to ensure they can effectively raise capital and respond to unique or innovative opportunities and investor needs.

6) Specified derivatives and structured finance products cannot be distributed under the OM Prospectus Exemption. Should we exclude other types of securities in order to prevent complex and/or novel securities being sold without the full protections afforded by a prospectus?

We do not support excluding certain types of securities. However if the OSC proceeds to do so we suggest one of two possible approaches involving complex and/or novel securities:

(a) restrict derivatives and structured finance products initially, but give further consideration to these securities types in phase two of the Exempt Market Review, or

(b) allow them (consistent with Alberta, British Columbia and other CSA jurisdictions) and provide further guidance on specific disclosure requirements in the second phase of the Exempt Market Review. This is the approach we support.

One of the reasons we do not believe in restricting certain types of securities is the example of structured products. There is a difference between simple asset-backed securities, such as those involving loan and lease financings, and those of more complicated structures aimed at institutional investors.

We seek clarification by the OSC of whether an issuer raising capital for loans to those acquiring a new or used automobile would be considered a complex and/or novel security. We respectfully submit that these types of issuers should not be considered as issuing complex and/or novel securities since they can provide investors with regular distributions and provide a diversified holding in a portfolio of loans.

Offering Parameters

7) We have not proposed any limits on the length of time an OM offering can remain open. This aligns with the current OM Prospectus Exemption available in other jurisdictions. Should there be a limit on the offering period? (a) How long does an OM distribution need to stay open? (b) Is there a risk that "stale-dated" disclosure will be provided to investors?

(a) An issuer in continuous distribution is different than an issuer that seeks a one-time capital raise. The PCMA does not believe a fixed distribution period allows the time and flexibility that is required by certain types of issuers and offerings. The key concern should be that the OM does not contain a misrepresentation at the time of distribution. If the distribution is over a period of time, then as a matter of law, issuers need to ensure that any disclosure has not changed or must update the OM accordingly.

There is already an obligation (discussed in NI 45-106CP) to update an OM if there has been a material change in the business of the issuer after delivery of an OM and

before an issuer accepts the agreement to purchase securities. There is also a requirement that financial statements cannot be stale-dated. For example, if a distribution is ongoing, an OM must contain updated audited financial statements in its OM that are no later than the 120th day following the financial year-end of an issuer.

Accordingly, the PCMA believes that no change is required to impose a distribution period in order to ensure an OM does not contain a misrepresentation since it is already required under applicable securities law.

(b) There is always a risk that an issuer will not update information in its OM while in distribution, although it cannot contain a misrepresentation as a matter of law. See our response in 7(a) above. To mitigate against such a risk, the OSC and other CSA members can provide clear guidance and information to issuers and registrants as part of their Outreach Programs, Staff Notices or other publications.

Registrants

8) Do you agree with our proposal to prohibit registrants that are "related" to the issuer (as defined in National Instrument 33-105 Underwriting Conflicts) from participating in an OM distribution? We have significant investor protection concerns about the activities of some EMDs that distribute securities of "related" issuers. How would this restriction affect the ability of start-ups and SMEs to raise capital?

The PCMA does not agree with the OSC's proposal to prohibit registrants that are "related" to an issuer from participating in an OM distribution. Having to contract the services of a non-related EMD to undertake a financing transaction will simply increase the cost of capital for issuers who want to distribute their own securities, and unduly restrict capital raising.

We respectfully disagree with the assumption that selling securities of a related issuer is fundamentally unsound and should be prohibited. Conceptually, there are many valid business reasons for an issuer selling its own securities including wanting to pay no or little commissions to third parties and controlling its own distribution channels.

We believe if an issuer is in the "business of trading" securities and must become registered as a dealer, or sell securities through a dealer, the fact that an issuer becomes registered should be seen as a positive outcome from a regulatory and industry perspective. This was a fundamental intention behind NI 31-103. The issuer itself, or through a related entity, is now

regulated and subject to the securities laws governing all registrants and its particular category of registration. However, the OSC appears to be taking the view that this situation is somehow worse for investors than when the issuer was unregulated. **We strongly disagree.**

We believe the public interest is served by having such an issuer registered and subject to the full oversight of a securities regulator. Accordingly, the question should be about what, if any, measures are needed to better regulate a dealer selling securities of a related issuer rather than the imposition of a blanket prohibition. We respectfully submit that the prohibition is an over-reaction to some dealers apparent disclosure and KYC deficiencies and is not the appropriate approach in these circumstances.

We note that no other CSA member, other than Ontario and New Brunswick, has proposed a prohibition on selling securities of related issuers. In the interest of harmonization and to avoid administrative confusion and complexity, we encourage the OSC to seriously reconsider its views on such matters and work with industry in developing a better way of managing such conflicts that protects investors and provides for fair and efficient capital markets.

The PCMA further submits that an outright prohibition does not recognize the significant work the OSC has already done in the exempt market through its communication and education of EMDs with respect to their obligations of KYP, KYC, and suitability under NI 31-103. We specifically note the work done by the OSC through annual compliance reports, dealer compliance reviews and OSC Outreach education seminars which help registrants understand the requirements for additional disclosure pertaining to related and connected issuer relationships, including those in National Instrument 33-105 – *Underwriting Conflicts*.

The PCMA believes registrants must constantly balance the best interests of the issuer, the investor and their own businesses and are capable of managing any conflicts of interest through commonly accepted industry practices.

Specifically, the PCMA submits that conflicts of interest are best managed through disclosure and a variety of techniques currently employed within the investment industry such as:

1. educating/enforcing the application of appropriate suitability standards, especially when conflicts of interest are involved;
2. providing continuing education for registrants about conflict identification and management techniques;
3. having documented policies and procedures that address KYC/KYP and conflicts of interest and in particular those involving related and connected issuers ;
4. implementing enhanced client disclosures/acknowledgements (*i.e.*, the relationship disclosure documents);

5. introducing independent product reviews by third parties much like an independent review committee involving mutual funds;
6. specific categorization of the relationship such as "principal distributor" (*i.e.,* manufacturer/distributor associated with offering documents) and providing enhanced disclosure related thereto;
7. expanding rights of rescission/withdrawals, and categorization of a transaction as "solicited/not solicited" and providing guidance on specific actions to be taken by a dealing representative and dealer in such circumstances; and
8. providing for enhanced compliance reviews by OSC field staff of dealers that sell securities of related issuers, perhaps through a new risk category for firms distributing related products that applies across all categories of dealers (including IIROC and MFDA dealers).

In addition, we believe that among the most effective tools used for conflict management is client disclosure and acknowledgements. Effective disclosure ensures that the client is fully aware of the conflict and the nature and extent of any conflict of interest prior to a transaction. Conflict disclosure has been successfully used in other segments of the investment industry and it is reasonable to assume that it would be equally successful in the exempt market.

Lastly, other factors the OSC should consider before prohibiting related issuers from availing themselves of the OM Prospectus Exemption are as follows:

(a) there are many issuers in the financial services sector that already sell related products to their customers such as banks, insurance companies, investment dealers and mutual fund companies. For example, individuals know they are buying a Ford automobile from a Ford dealership, a State Farm insurance policy from a State Farm insurance agent or an Investor's Group mutual fund from an Investor's Group mutual fund dealer;

(b) by allowing issuers to take advantage of their own distribution networks to raise capital without paying a commission or paying a reduced commission, issuers would have more capital to invest on behalf of investors;

(c) by having the issuer as a registrant, the trades would be required to pass the same scrutiny for KYC, KYP and suitability as through any other registrant; and

(d) issuers are currently able to do a non-brokered private placement directly to investors where these investor protections are completely circumvented.

We remind the OSC of the work that was done in the mutual fund industry in dealing with conflicts of interest, which resulted in, among other things, the creation of independent review committees under NI 81-107 and continuous disclosure requirements under National Instrument 81-106. We believe there are a number of existing regulatory tools available for regulators to address situations where related party products are sold by providing the necessary disclosures and other steps to manage and control potential conflicts of interest.

We are aware that the OSC is concerned with certain EMDs selling securities of related issuers and support further work in this area rather than invoking a complete prohibition.

9) Concerns have been raised about the role of unregistered finders in identifying investors of securities. (a) Should we prohibit the payment of a commission or finder's fee to any person, other than a registered dealer, in connection with a distribution, as certain other jurisdictions have done? (b) What role do finders play in the exempt market? (c) What purposes do these commissions or fees serve and what are the risks associated with permitting them? (d) If we restrict these commissions or fees, what impact would that have on capital raising?

(a) No, the OSC should not prohibit the payment of a commission or finder's fee to any person in connection with a distribution.

(b) In challenging capital markets such as today, issuers want as many people as possible looking for qualified investors. Today, finders refer interested and qualified investors to either an issuer or a registrant. The role of finders should be encouraged in the capital markets to incent individuals and others to locate investors provided that a finder's activities do not trigger registration under applicable securities laws. With that in mind, the PCMA believes the OSC should provide additional guidance on when the activities of a finder may trigger registration, including but not limited to, how many referrals a finder can make or the aggregate consideration a finder can receive, before a finder is considered to be "in the business of" trading securities. Moreover, the OSC may consider developing the concept of a "registered finder" that permits only a very narrow set of activities by finders that would not trigger registration as some States have done in the United States.

(c) Commission and fees serve to incent an individual or entity to refer an investor to an issuer or registrant, otherwise they may be less inclined to provide a referral. The obvious risk of permitting finders is that their activities amount to being "in the

business" of trading securities and such finders engage in registerable activities without being registered.

(d) If the OSC restricts commissions or fees to finders, it will have a direct an immediate and negative impact on capital raising.

Definition of Eligible Investor

10) We have proposed changing the $400,000 net asset test for individual eligible investors so that the value of the individual's primary residence is excluded, and the threshold is reduced to $250,000. We have concerns that permitting individuals to include the value of their primary residence in determining net assets may result in investors qualifying as eligible investors based on the relatively illiquid value of their home. This may put these investors at risk, particularly if they do not have other assets.

(a) Do you agree with excluding the value of the investor's primary residence from the net asset test? (b) Do you agree with lowering the threshold as proposed?

(a) No, the PCMA believes that a net asset amount should not exclude the value of the principal residence for individual investors when considering the eligible investor test. The commentary within the proposed amendments to the OM Prospectus Exemption published on March 20, 2014 by Alberta, Quebec, New Brunswick and Saskatchewan states that "*if investors are qualifying as "eligible investors" based on a net asset test, there are very few who could do so without including their principal residence*" (based on Statistics Canada data).

As this commentary further states, "*excluding an investor's principal residence may treat investors with similar net worth differently depending upon the types of assets they choose to hold*". In other words, an investor could take equity out of their principal residence to acquire an asset or security which would then be included as part their net assets for purposes of the eligible investor test. The unintended consequence of this approach may be to encourage investors to remove equity from their homes for investment purposes, which may not necessarily be in the public interest. It may also lead to the opposite behaviour from what regulators seek to encourage.

Many Canadians look to the equity of their homes as part of their savings and whether in the form of stocks, bonds or home equity, the PCMA believes it should be included in the net asset test under the definition on an eligible investor.

In the absence of specific evidence of harm, and for purposes of harmonization across the CSA, the PCMA believes the principal residence of an investor should remain included within the definition of their net assets.

(b) We do not believe the threshold should be lowered as proposed since we believe the principal residence of an investor should be included in the net asset test for purposes of the eligible investor test.

11) An investor may qualify as an eligible investor by obtaining advice from an eligibility advisor that is a registered investment dealer (a member of the Investment Industry Regulatory Organization of Canada). (a) Is this an appropriate basis for an investor to qualify as an eligible investor? (b) Should the category of registrants qualified to act as an eligibility advisor be expanded to include EMDs?

(a) Yes, the PCMA agrees with the concept of an eligibility advisor, but believes it needs to be expanded to include EMDs.

(b) In many cases, an EMD would be a more appropriate person, given their specialized expertise in exempt products, to provide suitability advice, as compared to an investment dealer. Moreover, it is unlikely that an investment dealer would provide such advice to an investor unless they were leading or part of an exempt offering. The time, money and effort for an investment dealer to undertake KYP, KYC and suitability would arguably not be worth the consideration it would receive for providing eligibility advice.

Investment Limits

12) Do you support the proposed investment limits on the amounts that individual investors can invest under the OM Prospectus Exemption? In our view, limits on both eligible and non-eligible investors are appropriate to limit the amount of money that retail investors invest in the exempt market. Are the proposed investment limits appropriate?

No, the PCMA is against the imposition of investment limits or caps as set out in the Proposed Amendments involving the OM Prospectus Exemption for the reasons set out below.

(a) An investment cap treats all eligible investors as a homogenous cohort

The PCMA submits that an investment cap treats all eligible investors as a single homogenous cohort which they are not. There is a significant difference in the investment needs of an eligible investor who earns:

(i) $80,000 or more per annum for the last two years and contemplates making the same or more in the year of investment (**Situation A**); and

(ii) $190,000 or more per annum for the last two years and contemplates making the same or more in the year of investment (**Situation B**).

For example, an investment of less than $30,000 may be suitable for an investor who qualifies as an eligible investor in Situation A while unfairly limiting an investor who qualifies in Situation B. Specifically, an investor in Situation B may actually be able to invest a lot more than $30,000 (the proposed investment cap) and in circumstances when such an investment may be completely suitable. Simply, the PCMA believes treating all eligible investors as a homogenous cohort is not in the public interest and will unfairly restrict the amount that certain types of eligible investors can invest in circumstances that are entirely suitable.

(b) Investment limits misalign the interests of issuers and dealers

A registrant has an obligation to determine whether an investment is suitable while an issuer does not. The PCMA is concerned that the interests of issuers and dealers will be misaligned with the imposition of an investment limit. Rather than encouraging investors and issuers to work with registered dealers an investment limit may do the opposite.

For example, consider an issuer who engages a registered dealer to raise capital. The dealer finds 20 investors who each invest, for example, $20,000 since an investment of more than $20,000 is not suitable for each such investor. The investors and/or the issuer wants the investor to invest up to the limit so either the issuer accepts subscriptions from such individuals directly via a non-brokered private placement (during the offering and unbeknownst to the dealer) or post closing involving another offering when no dealer is involved. An issuer has no obligation to ensure that an investment is suitable and hence can now raise funds from an investor up to

the cap. Such misalignment between issuers and dealer should be concerning to the OSC and other CSA members.

(c) If investment caps are introduced, they should not apply when a registrant is involved

If the OSC adopts investment caps, then the PCMA believes no such limits should apply when a registrant is involved in an offering, including EMDs who want to sell securities on the internet under existing prospectus exemptions, such as the OM Prospectus Exemption.

Fundamentally, we are against such investment caps since we believe dealers, as registrants, have certain legal obligations under applicable securities law to ensure that an investment is suitable for an investor. This was one of the cornerstones of registration reform when it came into force in 2009 and is a fundamental responsibility of a registrant.

PCMA submits that only a registrant has the legal responsibility to make sure an investment is suitable based on a number of factors including, but not limited to, an investor's age, investment needs, investment time horizon and risk tolerance. An investment cap ignores such varied factors that need to be tailored to each individual investor. We find an investment cap inconsistent with a registrant's suitability obligations under applicable securities law. It is also not clear why a registrant can do a suitability analysis for amounts under the investment cap but can no longer do so when an investment amount is in excess of the cap. We submit this does not make sense.

(d) If investment caps are introduced, they should apply on a per issuer basis

If the Participating Jurisdictions adopt investment caps, then the PCMA believes they should apply per issuer group on an annual basis. This would allow investors to invest a maximum of $30,000 per issuer on an annual basis (based on the proposed investment cap) but invest an unlimited amount under the OM Prospectus Exemption involving different issuers. The PCMA believes this would alleviate some of the concerns we have with adopting a fixed investment cap per investor.

(e) Limited data to support an investment cap of $30,000 per annum

We understand that the proposed investment cap of $30,000 is based on two years of data provided by the Alberta Securities Commission. We are not aware of any other data from any other CSA member where the OM Prospectus Exemption has been available for many years. In the absence of such data, we submit that adopting an investment cap is arbitrary and inconsistent with the current approach for evidence-based regulation. Moreover, any arbitrary limits, or tiered investment thresholds based on the eligibility or accreditation of investors, simply serves to restrict access to capital that is needed to support Canadian businesses and our economy.

Notwithstanding our comments in (c) and (d) above, we wish to reiterate that the PCMA is fundamentally opposed to the introduction of investment limits as proposed by the OSC, particularly when a dealer is involved in the transaction. We believe the suitability obligations placed upon dealers are the fundamental regulatory principle that should apply to all decisions on how much an investor can, or should, be investing.

Point of Disclosure

13) Current OM disclosure requirements do not contain specific requirements for blind pool issuers. (a) Would blind pool issuers use the OM Prospectus Exemption? (b) Would disclosure specific to a blind pool offering be useful to investors?

(a) Yes, we believe blind pool issuers use the OM Prospectus Exemption.

(b) Yes, disclosure specific to a blind pool offering would be useful to investors and cost effective for issuers similar to the standard disclosure requirements for capital pool companies under the TSX Venture's CPC program.

14) We are not considering any significant changes to the OM form at this time. However, we are aware that many OMs are lengthy, prospectus-like documents. Are there other tools we could use at this time (short of redesigning the form) to encourage OMs to be drafted in a manner that is clear and concise?

We believe your question fundamentally involves judgement, which is difficult to regulate, particularly in the absence of clear and consistent guidance from the CSA. What is clear and

concise to one CSA member, or to one issuer and their legal counsel, may not be clear to another CSA member or another issuer and their counsel.

One suggestion is to provide an acceptable OM Facts document that essentially provides an investor with standardize meaningful disclosure similar to the concept of Fund Facts for mutual funds.

More consistent and prescriptive guidance, perhaps resulting from a subsequent CSA review, would be very useful in helping the industry understand how it rely on shorter and more concise OM's, yet ensure they are compliant with legal and regulatory expectations.

Advertising and Marketing Materials

15) In our view any marketing materials used by issuers relying on the OM Prospectus Exemption should be consistent with the disclosure in the OM. We have proposed requiring that marketing materials be incorporated by reference into the OM (with the result that liability would attach to the marketing materials). Do you agree with this requirement?

(a) Yes, we agree with the requirement that marketing materials be incorporated by reference into the OM and resulting liability. We are aware that some EMDs and issuer are providing what they call 'analyst reports' to investors. We would appreciate further guidance from the OSC and a consistent approach across the CSA on whether such reports can, or should, be used for this purpose. We note a number of concerns that have been raised regarding resulting liability and registration requirements involving the providers of such reports, and potential overreliance on the reports in place of KYP obligations, which the OSC has helpfully commented on.

The PCMA also believes that industry would benefit from further guidance from the OSC as to what specifically constitutes an issuer's marketing materials beyond the offering document and a related investor presentation. Specifically, we are concerned if this is intended to include information on an issuer's website, blog or other form of social media which may be on an issuer's electronic media (for historic or other purposes) but may not be consistent with a current OM. Additional guidance would be appreciated.

Ongoing Information Available to Investors

16) (a) Do you support requiring some form of ongoing disclosure for issuers that have used the OM Prospectus Exemption, such as the proposed requirement for annual financial statements?(b) In our view, this type of disclosure will provide a level of accountability. Should the annual financial statements be audited over a certain threshold amount? (c) If the aggregate amount raised is $500,000 or less, is a review of financial statements adequate?

(a) Generally, the PCMA has no objection to some form of ongoing disclosure for issuers that have used the OM Prospectus Exemption, such as the proposed requirement for annual financial statements. However, circumstances may arise where, due to exigent circumstances, an issuer cannot provide such ongoing disclosure. In such circumstances, the PCMA believes some form of relief should be provided by the OSC and other CSA members that adopt an ongoing disclosure requirement for issuers that raise capital under the OM Prospectus Exemption.

(b) As per our response to Question #1, we believe that annual financial statements should be audited, on an ongoing basis, if an issuer has raised more than a $1 million and expended more than $250,000, subject to exigent circumstances discussed in our response to Question 16(a). Where amounts raised are in excess of $500,000 financial statements should be reviewed by an auditor.

(c) The PCMA believes that review engagement financial statements are adequate for amounts raised by an issuer under any prospectus exemption in excess of $500,000, but less than $1 million.

17) We have proposed that non-reporting issuers that use the OM Prospectus Exemption must notify security holders of certain specified events, within 10 days of the occurrence of the event. We consider these events to be significant matters that security holders should be notified of. Do you agree with the list of events?

Yes, the PCMA agrees with this requirement but believe the time period to provide such specified event disclosure should be 20 days not 10 days following the specified event. We encourage such ongoing disclosure provided that the OSC and the CSA consider adopting a form of secondary market trading in the private capital markets. We submit that this can be considered in phase two of the Exempt Market Review.

18) Is there other disclosure that would also be useful to investors on an ongoing basis?

No, we are satisfied with the proposed disclosure requirements.

19) We propose requiring that non-reporting issuers that use the OM Prospectus Exemption must continue to provide the specified ongoing disclosure to investors until the issuer either becomes a reporting issuer or the issuer ceases to carry on business. (a) Do you agree that a non-reporting issuer should continue to provide ongoing disclosure until either of these events occurs? (b) Are there other events that would warrant expiration of the disclosure requirements?

(a) Yes we agree.

(b) No.

Reporting of Distribution

20) We believe that it is important to obtain additional information to assist in monitoring compliance with and use of the OM Prospectus Exemption. Form 45-106F11 would require disclosure of the category of "eligible investor" that each investor falls under. This additional information is provided in a confidential schedule to Form 45-106F11 and would not appear on the public record. Do you agree that collecting this information would be useful and appropriate?

The PCMA has no objection to the collection of such information, however, in the interest of harmonization and to avoid administrative confusion and complexity, we note that there will be multiple forms required depending on what jurisdictions distribution of securities are occurring. In our opinion, it is important for the OSC to work with the CSA to create harmonization.

In addition, some information is not necessarily made available to issuers such as individuals email address or age of investor. Some investors either do not have an email address or do not wish to provide their email address and receive electronic communications. We also note that most investor databases store date of birth, but not the age of investor and extracting that could require an expensive systems change.

FFBA PROSPECTUS EXEMPTION

Types of Securities

1) Do you agree with our proposal to limit the types of securities that can be distributed under the FFBA Prospectus Exemption to preclude novel and complex securities? Do you agree with the proposed list of permitted securities?

We refer you to our response in Question 5 regarding the OM Prospectus Exemption.

Offering Parameters

2) Should there be an overall limit on the amount of capital that can be raised by an issuer under the FFBA Prospectus Exemption?

No.

Investor Qualifications

3) (a) Do you agree with the revised guidance in sections 2.7 and 2.8 of 45-106CP regarding the meaning of "close personal friend" and "close business associate"? (b) Is there other guidance that could be provided regarding the meaning of these terms?

(a) Yes, we agree with the revised guidance, but are concerned that the other CSA members do not agree. If the OSC adopts the proposed guidance, it should clarify whether there is anything in the guidance that another CSA member may not necessarily agree with. It would not be in the public interest for an issuer to satisfy the definition of a "close personal friend" and "close business associate" in one jurisdiction to find out later that another CSA member has a different interpretation.

(b) No, we are not aware of any further guidance that can be provided regarding the meaning of the terms. However, these are subjective tests and there is a concern that the OSC or other CSA member would impose its interpretation over than of an issuer and/or investor. It would be helpful if the OSC and other CSA members clarified when enforcement action would be taken against an issuer and dealer in the event that they got it wrong.

Investor Limits

4) Should there be limits on the size of each investment made by an individual under the FFBA Prospectus Exemption or an annual limit on the amount that can be invested?

No, the PCMA does not believe there should there be limits on the size of each investment made by an individual under the FFBA Prospectus Exemption or an annual limit on the amount that can be invested.

Risk Acknowledgement Form

5) Does the use of a risk acknowledgement form that is required to be signed by both the investor and the person at the issuer with whom the investor has the relationship mitigate against potential risks associated with improper reliance on the FFBA Prospectus Exemption?

Yes, the PCMA believes that a risk acknowledgement form may help mitigate against potential risks associated with improper reliance on the FFBA Prospectus Exemption and the proposed form is acceptable.

However, Saskatchewan has a similar risk acknowledgement form and it does not make sense to have two jurisdictions having two different forms while all other CSA members requiring no form. We strongly encourage the OSC to cooperate with the other CSA members to achieve harmonization of this matter.

Reporting of Distribution

6) We believe it is important to obtain additional information in Form 45-106F11 to assist in monitoring compliance with and use of the FFBA Prospectus Exemption. Form 45-106F11 would require disclosure of the person at the issuer with whom the investor has a relationship. This additional information is provided in a schedule to Form 45-106F11 that does not appear on the public record. Do you agree that collecting this information would be useful and appropriate?

Yes, the PCMA believes that collecting this information is appropriate.

EXISTING SECURITY HOLDER PROSPECTUS EXEMPTION

General Comments

It is discouraging that the OSC is considering adopting an existing security holder exemption that is not identical to the equivalent exemption adopted throughout the rest of Canada. This exemption should be available nationally and equally to all Canadian reporting issuers and investors regardless of their location. Inconsistent regulation ultimately creates unnecessary friction, regulatory and investor confusion and increased compliance costs.

The OSC should review public comment letters received in response to the other provinces and territories request for comment to the existing security holder exemption. The majority of these response letters were overwhelmingly in support of the proposed exemption. The form of the exemption adopted in these provinces and territories reflects the considered views of these various CSA members and a wide sector of the market as represented by the comment letter writers. The OSC should not ignore these views and adopt a version of the existing security holder exemption that differs in any respect to that adopted in all of the other CSA members.

Issuer Qualification Criteria

1) Do you agree with allowing any issuer listed on the TSX, TSXV and CSE to use the Existing Security Holder Prospectus Exemption?

Yes, reporting issuers generally have the same continuous disclosure requirements under Canadian securities laws (with certain exceptions for venture issuers) and should be treated equally. We see no reason to distinguish TSX-V issuers and venture issuers listed on other exchanges for the purpose of eligibility to use the Existing Security Holder Prospectus Exemption.

Offering Parameters

2) Do you agree that the offer must be made to all security holders and on a pro rata basis? Do you agree that these conditions support the fair treatment of all security holders?

No, the PCMA believes that the cost of administering a pro rata rights offering is cost prohibitive to small issuers.

There is no requirement that an issuer make the offer on a pro rata basis under the existing security holder exemption adopted in all of the other provinces and territories in Canada. Ontario should not impose a requirement that differs and potentially puts Ontario-based issuers and investors at a disadvantage or otherwise makes the exemption unattractive.

The requirement to offer securities on a pro rata basis is one of the reasons reporting issuers do not use the existing rights offering exemption in Canada. Issuers when offering securities on a pro rata basis must contact each shareholder by first contacting their transfer agent to do a broker search for objecting and non-objecting beneficial shareholders as of the record date for the offering. They then need to mail a notice regarding the offering to registered shareholders and to intermediaries for delivery to the underlying beneficial shareholders and then wait a reasonable time for response. This entails considerable time and added cost. In addition, it provides a false sense of fair treatment as objecting shareholders will not receive the offer eliminating any true pro rata offer to all the shareholders of an issuer.

The existing rule adopted by the other CSA members requires investors to self-identify after seeing the press release, which streamlines the process. Issuers in their press release are to describe how they intend to allocate securities if aggregate subscriptions for securities under the proposed distribution exceed the maximum number of securities proposed to be distributed. Applicable stock exchange rules concerning private placements also provide issuers guidance and require shareholder approval if a private placement will create a new control person or if the private placement involves a related party transaction. A pro rata requirement adds very little in terms of fair treatment for the added cost, time, and complication.

3) Do you agree that it is not necessary to differentiate between a security holder that bought securities in the secondary market one day before the announcement of the offering and a security holder that bought the securities some longer period before the announcement of the offering?

Yes, the PCMA agrees that this differentiation is not necessary.

Resale Restrictions

4) Should securities distributed under the Existing Security Holder Prospectus Exemption be freely tradeable?

No, the PCMA believes that a four-month hold period should apply to securities distributed under the Existing Security Holder Prospectus Exemption. Imposing a four-month hold period is consistent with the hold-period that applies to other available prospectus exemptions under NI 45-106, such as the accredited investor exemption.

CROWDFUNDING PROSPECTUS EXEMPTION

Issuer Qualification Criteria

1) Should the availability of the Crowdfunding Prospectus Exemption be restricted to non-reporting issuers?

No, the PCMA believes the Crowdfunding Prospectus Exemption should be equally accessible to reporting and non-reporting issuers.

2) Is the proposed exclusion of real estate issuers that are not reporting issuers appropriate?

No, the PCMA believes that real estate is an important asset class for both investors and issuers for the reasons set out below:

(a) there are many profitable real estate investments that provide steady yield and cash flow to investors while not relying on speculation or market appreciation to provide returns. Moreover, private real estate is highly uncorrelated to the public markets and therefore provides an alternative and important cash flowing asset class for yield-hungry investors;

(b) investors can be educated on how real estate is valuated. Expenses and budgets can be accurately projected up front so that investors are made aware of the projected costs and revenues before subscribing to an investment. In fact, the OSC has

published guidance on such matters as set out in OSC Staff Notice 51-721 *Forward Looking Information Disclosure*;

(c) many investors understand real estate and want to invest in their communities;

(d) many investors do not have the time, experience or capital to invest in a real estate project on their own. However, they can invest a small amount that forms a part of their individual portfolio while partnering with an experienced real estate developer/property manager to operate the asset; and

(e) real estate investments create jobs for local small and medium size enterprises (**SMEs**). For example, a single $1.5M equity crowdfunding investment can support a real estate development of $5M with the use of a typical real estate mortgage. This project would be injecting roughly $1.5M into labour costs in the local economy, as well as $500,000 to professional trades. Another $600,000 would be transferred to the local municipality through development fees as well as $200,000 to the local utilities. A single project could create over 30 full time jobs at an annual salary of $60,000. To suggest that the Crowdfunding Prospectus Exemption should exclude real estate as an asset class because it does not help SMEs is incorrect and misguided.

We understand there are concerns about potential conflicts of interest between a crowdfunding portal that raises capital for real estate projects where it has a material interest (*i.e.,* where the issuer and owner of a project is a related issuer of the portal). The PCMA believes that these concerns can be adequately addressed through detailed and responsible disclosure requirements and the adoption of additional safeguards. We would be pleased to work with the OSC to address these concerns once we understand exactly what the basis for them is. We refer the OSC to our comments involving the proposed prohibition on related issuers from using the OM Prospectus Exemption above (Question 8 under the OM Prospectus Exemption).

Based on the foregoing, the PCMA opposes the proposed exclusion of real estate from the Crowdfunding Prospectus Exemption and, in particular, believes that income producing real estate is an important and viable asset class for investors and should not be ignored let alone prohibited by the OSC.

3) The Crowdfunding Prospectus Exemption would require that a majority of the issuer's directors be resident in Canada. One of the key objectives of our crowdfunding initiative is to facilitate capital raising for Canadian issuers. We also think this requirement would reduce the risk to investors. Would this requirement be appropriate and consistent with these objectives?

Generally, this sort of requirement is contrary to the borderless nature of an online e-commerce business. The Canadian start-up and SME community are in fierce competition for talent, markets and capital with US and international companies. If the Crowdfunding Prospectus Exemption for Issuers is too restrictive, Canadian entrepreneurs will simply bypass the Canadian capital markets. Moreover this not a restriction under any other existing private capital markets prospectus exemption.

Restricting board makeup to be a majority of Canadian residents is a serious barrier to Canadian issuers building the right team (including its board of directors) to compete on a global scale. The proposed regulation is a serious concern to the PCMA. SMEs have a hard enough time attracting great management and board members without putting geographic constraints on an issuer.

Similarly, limiting the use of the Crowdfunding Prospectus Exemption to Canadian domiciled companies severely undermines the market opportunity for Canadian-based Crowdfunding portals to survive and flourish in this burgeoning new global business model. As long as the proper cross-border documents are filed with US and Canadian securities regulators, and the Issuer has a registered business location in Canada, there should be no restriction on US companies using the Crowdfunding Prospectus Exemption.

Finally, an equally important consideration in the Crowdfunding movement is allowing the general public to participate in the next Apple, Google, Facebook or Twitter. By limiting US start-ups from accessing the Canadian capital markets (which is what this proposal effectively does) we are limiting the Canadian public's opportunity to participate as an investor in "the next big thing".

Offering Parameters

4) The Crowdfunding Prospectus Exemption would impose a $1.5 million limit on the amount that can be raised under the exemption by the issuer, an affiliate of the issuer, and an issuer engaged in a common enterprise with the issuer or with an affiliate of the issuer, during the period commencing 12 months prior to the issuer's current offering. (a) Is $1.5 million an

appropriate limit? (b) Should amounts raised by an affiliate of the issuer or an issuer engaged in a common enterprise with the issuer or with an affiliate of the issuer be subject to the limit? © Is the 12 month period prior to the issuer's current offering an appropriate period of time to which the limit should apply?

(a) Yes, $1.5 million is an appropriate limit, however, if a sunset clause is introduced for this exemption, then it should be revisited in the future. We note there is already concern in this US that its proposed limit of $1 million should be increased to $2-3 million.

(b) Yes, the amounts raised by an affiliate of the issuer or an issuer engaged in a common enterprise with the issuer or with an affiliate of the issuer should be subject to the limit.

(c) Yes, the 12 month period prior to the issuer's current offering is an appropriate period of time to which the limit should apply.

5) Should an issuer be able to extend the length of time a distribution could remain open if subscriptions have not been received for the minimum offering? If so, should this be tied to a minimum percentage of the target offering being achieved?

Yes, the PCMA believes that in many cases 90 days may not be sufficient time to close a crowdfunding transaction. If the concern is that information becomes stale if the offering is open for too long, then we suggest the offering be allowed to remain open for a further 90 days provided that:

- 20% of the offering has been raised; and
- the information about the offering on the portal is still accurate, or it is updated to change any stale dated financials or other information.

Restrictions on Solicitation and Advertising

6) Are the proposed restrictions on general solicitation and advertising appropriate?

Yes, the PCMA believes the proposed restrictions on general solicitation are appropriate. However, additional guidance is required in connection with an issuer undertaking a concurrent offering under another prospectus exemption and the advertising that can be done in relation thereto while the issuer is also doing its crowdfunding offering on a portal.

Investment Limits

7) The Crowdfunding Prospectus Exemption would prohibit an investor from investing more than $2,500 in a single investment under the exemption and more than $10,000 in total under the exemption in a calendar year. An accredited investor can invest an unlimited amount in an issuer under the AI Exemption. Should there be separate investment limits for accredited investors who invest through the portal?

The PCMA believes that in the absence of any income or net worth tests to determine eligible or accredited investor status, the proposed funding caps are too low and will make it extremely difficult for issuers to complete a $1.5 million fundraising under the proposed Crowdfunding Prospectus Exemption. For example, it would take 600 investors each investing $2,500, to raise $1.5 million. This base of investor support is impossible for start-up and early stage companies to achieve.

The PCMA submits that the OSC should increase the investment limit from $2,500 to $5,000 for non-eligible investors, and also consider allowing the non-eligible investors to “top up” the amount invested in a single offering to the $10,000 annual maximum.

We further submit that the crowdfunding investment limits should be increased for accredited investors (who invest through an equity crowdfunding portal. An increased limit for accredited investors would:

(a) allow issuers to more easily achieve their financing goals by having funding portals attract accredited investors and achieve a certain amount of confidence in their offering by having an accredited investor invest a larger sum of money as a "lead investor"; and

(b) permit funding portals to be fairly compensated in relation to the distribution of securities to an accredited investor. For example, an accredited investor having sourced the transaction on the funding portal web site, but faced with an investment limit, could otherwise directly approach the issuer for the purchase of its securities and thereby bypass the funding portal.

We suggest that investment limits should be increased for accredited investors participating through a funding portal under the Crowdfunding Prospectus Exemption, without introducing suitability obligations for the portal. While we do not have a specific recommendation as to the limit to be imposed for an accredited investor, such a limit should take into account:

(a) the level of sophistication of these investors (as compared to the general public); and

(b) their ability to purchase an unlimited amount of securities directly from an issuer.

Based on the foregoing, we submit a precedent has been set in Ontario and Quebec with the exemptive relief order received by MaRS VX. This order establishes a $25,000 investment limit for accredited investors per transaction and $50,000 limit annually in any and all transactions under this exemption, with a corresponding obligation to verify an investor's status as an accredited investor and without having any obligation to determine whether such an investment is suitable for that accredited investor.

Alternatively, we also refer you to our answer to question 18 below where a registered dealer should be able to raise capital for issuers under the Crowdfunding Prospectus Exemption and raise an unlimited amount of money from an accredited investor, provided that the registered dealer complies with applicable securities law including its obligation to ensure an investment is suitable.

Statutory or Contractual Rights In the Event of a Misrepresentation

8) The Crowdfunding Prospectus Exemption would require that, if a comparable right were not provided by the securities legislation of the jurisdiction in which the investor resides, the issuer must provide the investor with a contractual right of action for rescission or damages if

there is a misrepresentation in any written or other materials made available to the investor (including video). (a) Is this the appropriate standard of liability? (b) What impact would this standard of liability have on the length and complexity of offering documents?

(a) No, this is not the appropriate standard of liability. The PCMA believes that an issuer and a portal must comply with applicable regulatory regimes in the different CSA jurisdictions. Each CSA member imposes or does not impose statutory rights of action for various reasons and the PCMA believes having a Crowdfunding Prospectus Exemption should not change the status quo unless it is changed for all prospectus exemptions.

(b) We are not concerned whether adding rights of action increase the length and complexity of an offering document since it is an important investor protection safeguard.

Provision of Ongoing Disclosure

9) How should the disclosure documents best be made accessible to investors? To whom should the documents be made accessible?

Offering documents should be published online and downloadable. Online disclosure and ongoing communications should be available to all shareholders and can be password protected to protect an issuer's confidential information.

10) (a) Would it be appropriate to require that all non-reporting issuers provide financial statements that are either audited or reviewed by an independent public accounting firm? (b) Are financial statements without this level of assurance adequate for investors? (c) Would an audit or review be too costly for non-reporting issuers?

(a) The PCMA believes that financial statements are essential for the purposes of determining the financial health and historical performance of an issuer. However, the PCMA also believes that a requirement for all non-reporting issuers to provide financial statements that are audited or reviewed by an independent public

accounting firm as unwarranted and too costly for many SMEs, unless they have raised in excess of a certain amount of capital.

The proposed Crowdfunding Prospectus Exemption provides that an issuer that has raised in excess of $500,000 and expended more than $150,000 is required to have audited financial statements. The PCMA submits that a review engagement should be required if both proposed thresholds are triggered, and that an audit requirement only be imposed when $1 million, or more has been raised by an issuer and/or it has expended more than $250,000 since inception. Simply, the PCMA believes the current review engagement and audit triggering thresholds are too low.

(b) In a perfect world, audited financial statements would typically be preferred by investors. However, not all start-ups and SMEs can afford audited financial statements. PCMA submits that investor protection and the level of assurance of financial statements must be balanced against the amount of capital raised and an issuer's financial ability to provide financial statements with a higher level of assurance.

(c) An audit or review would be too costly for many start-ups and should only apply after an issuer has raised and expended a certain amount of money. See also our answer in 10(a) above for our proposed revised thresholds.

11) The proposed financial threshold to determine whether financial statements are required to be audited is based on the amount of capital raised by the issuer and the amount it has expended. Are these appropriate parameters on which to base the financial reporting requirements? Is the dollar amount specified for each parameter appropriate?

No, the PCMA believes the threshold amounts in the proposed Crowdfunding Prospectus Exemption are too low. See above response under question 10 above.

Other

12) Are there other requirements that should be imposed to protect investors?

No, the PCMA believes that the proposed mechanisms relating to investor protection are adequate.

CROWDFUNDING PORTAL REQUIREMENTS

General Registrant Obligations

13) The Crowdfunding Portal Requirements provide that portals will be subject to a minimum net capital requirement of $50,000 and a fidelity bond insurance requirement of at least $50,000. The fidelity bond is intended to protect against the loss of investor funds if, for example, a portal or any of its officers or directors breach the prohibitions on holding, managing, possessing or otherwise handling investor funds or securities. Are these proposed insurance and minimum net capital amounts appropriate?

Yes, the PCMA believes that the proposed requirements are acceptable and consistent with industry standards.

Additional Portal Obligations

14) Do you think an international background check should be required to be performed by the portal on issuers, directors, executive officers, promoters and control persons to verify the qualifications, reputation and track record of the parties involved in the offering?

Yes, but subject to our comments below.

The process involved in conducting an international background check varies widely depending on the applicable jurisdiction (as does the legislation governing privacy law). It could cost thousands of dollars per search, depending on the jurisdiction. Furthermore, translation considerations and the time involved in obtaining credible results may hinder the ability of an issuer to proceed with an offering in a timely manner. For these reasons, the PCMA believes that the obligation to conduct international background checks on the insiders of an issuer would be a complex, burdensome and a costly requirement for both portals and issuers.

The PCMA believes the OSC should provide additional guidance on what work needs to be done for an international background check. The OSC should consult with those service providers that currently provide such international background checks for potential directors who seek to be on the board of an issuer listed on a stock exchange. The OSC needs to balance the costs for these international background checks with the need to protect investor from individuals who

are bad actors.

Prohibited Activities

15) The Crowdfunding Portal Requirements would allow portal fees to be paid in securities of the issuer so long as the portal's investment in the issuer does not exceed 10%. (a) Is the investment threshold appropriate? (b) In light of the potential conflicts of interest from the portal's ownership of an issuer, should portals be prohibited from receiving fees in the form of securities?

(a) The PCMA believes that the 10% ownership limit for a portal in an issuer is acceptable. PCMA believes any conflicts of interest in obtaining such an equity interest in an issuer is adequately addressed under the Crowdfunding Prospectus Exemption since a portal is prohibited from:

(i) providing specific recommendations or advice to investors about specific securities;

(ii) soliciting purchases or sales of securities offered on its platform (other than through posting an offering on its platform); and

(iii) compensating employees or agents to solicit the sale of securities on their platform, the PCMA does not believe that portals should be prohibited from receiving fees in the form of securities.

Some portals in other parts of the world have raised capital for themselves on their own portal, such as Crowdcube in the United Kingdom. We believe a portal should be able to raise capital on its own portal for itself subject to certain conflicts of interest disclosure. Many investors may want to invest in a portal and a portal should not have to go to a dealer and pay a commission in order to raise capital for itself.

(b) No, a portal should not be prohibited from receiving securities as compensation for its services. Dealers typically receive cash and warrants in connection with an offering.

16) The Crowdfunding Portal Requirements restrict portals from holding, handling or dealing with client funds. Is this requirement appropriate? How will this impact the portal's business operations? Should alternatives be considered?

The PCMA is not clear how a portal cannot hold, manage, possess or otherwise handle investor funds. For example, if an escrow account is set up at a financial institution, is this an account of the portal or that of the issuer? A third party escrow agent will likely want little to no liability and only take instructions from a third party. It would make sense that this gate-keeper function would be handled by the portal and not the issuer. Investors would also typically expect a portal to be involved in collecting and disseminating any funds. We respectfully request additional clarification on this matter.

Other

17) Are there other requirements that should be imposed on portals to protect the interests of investors?

No, the PCMA believes that the proposed requirements governing portals are acceptable.

18) Will the regulatory framework applicable to portals permit a portal to appropriately carry on business?

We are concerned that the proposed regulation of crowdfunding portals prohibits EMDs and investment fund dealers from operating a crowdfunding portal and relying on the Crowdfunding Prospectus Exemption to raise capital. We believe that these dealers should be able to raise capital under the Crowdfunding Prospectus Exemption or any other prospectus exemption. Registered dealers understand corporate finance and capital raising and have important exempt market experience new market entrants, such as restricted portal dealers, may not have.

Also, we seek clarity on whether a holding company can own a restricted dealer, operating as a crowdfunding portal, as well as an EMD. Some investment groups would like to raise capital through a crowdfunding portal under the Crowdfunding Prospectus Exemption and concurrently under existing prospectus exemptions through an EMD. Moreover, crowdfunding

portals may want to refer accredited investors to a related EMD instead of a third party EMD. If a portal has to refer an accredited investor to an EMD, they would receive a smaller referral fee, as opposed to the full transaction commission, or potentially lose the accredited investor who may invest directly with an issuer without paying any fee to the portal. This is concerning since the accredited investor arguably first became aware of the investment opportunity on the portal. Many crowdfunding portals believe their economic viability depends on whether they can also raise capital through a related EMD under other prospectus exemptions.

Based on the foregoing, the PCMA submits that a holding company should be able to own a portal that is registered as a restricted dealer as well as an EMD provided that they are each a separate legal entity that is operating and regulated in two different manners under Canadian securities law. In these scenarios, it is very important that executive oversight, board governance and compliant processes be shared (*e.g.,* shared Chief Compliance Officer), in order to ensure the business viability of the emerging registrants in the crowdfunding portal operator marketplace.

The PCMA submits that this related company ownership model is a viable solution and reduces the risk of any public confusion involving a dually registered firm which we understand is the CSA's concern.

SPECIFIC REQUESTS FOR COMMENT - ACTIVITY FEES

1) Are the proposed activity fees appropriate? Do they address the objectives and concerns by which were guided?

The PCMA believes that the proposed fees are reasonable.

2) Should we consider any other activity fees for exempt market activity?

The PCMA believes that no other activity fees should be required.

Proposed Reports

1) Do the changes to the reporting requirements strike an appropriate balance between: (i) the benefits of collecting information that will enhance our understanding of exempt market activity and as a result, facilitate more effective regulatory oversight of the exempt market and inform our decisions about regulatory changes to the exempt market, and (ii) the compliance burden that may result for issuers and underwriters?

In our view, the proposed reporting requirements fail to strike the right balance between the benefits of collecting additional information and the resulting compliance burden on issuers and underwriters.

a) Too many report of trade forms – the need to harmonize

The Proposed Amendments will result in **three different types of forms** being required for the same trade, depending on the jurisdiction. For example, sales of securities to accredited investors in British Columbia, Ontario and Saskatchewan will require the filing of a Form 45-106F6 in British Columbia, a Form 45-106F11 in Ontario (a non-investment fund issuer) and a Form 45-106F1 in Saskatchewan. This lack of harmonization is extremely concerning and will adversely and materially impact the cost of capital raising. The time, money and effort involved by issuers will be substantial and the CSA must work harder to harmonize this. What is even more concerning is this desire for additional information without any discussion on how issuers and the public can access such information in any centralized CSA database. We submit that this issue is not getting any attention when it is of paramount importance.

b) Comments on Form 45-106F10 Report of Exempt Distribution

The introduction of Form 45-106F10 *Report of Exempt Distribution For Investment Fund Issuers* (Alberta, New Brunswick, Ontario and Saskatchewan) (the "**F10**") means that investment fund managers will now need to complete three different forms of Report of Exempt Distribution, which imposes a significant, additional compliance burden.

For Canadian-based investment fund managers, the additional administrative burden of the proposed reports and the added costs of filing more frequently will act as a competitive disadvantage. Investment fund managers may be incented to offer fewer funds in order to keep administrative burdens at a manageable level. This will likely result in decreased competition among fund companies and less choice for Canadian investors. Consequently, this will lead to reduced access to the exempt market for issuers and investors alike. This is not in the best

interest of Canadian investors, particularly where investors are continually seeking to diversify their portfolios and to find opportunities for improved performance. Investors who invest in investment funds that are offered in the exempt market do so because they are deliberately seeking alternatives to 'plain vanilla' public mutual funds or ETFs.

The introduction of the proposed F10 and volume of additional information requested is likely to act as (i) an additional disincentive for investment funds that are currently distributed in the exempt market to continue to do business in Canada, and (ii) a barrier to entry for new investment funds. Our specific concerns regarding the introduction of the F10 are set out below.

i. F10 Content requirements

The Proposed Amendments state that the objectives for the reports are to "enhance our understanding of exempt market activity", "facilitate more effective regulatory oversight", and "inform our decisions about regulatory changes". In our view, the information requested in the proposed F10 is not appropriate nor necessary to achieve these stated objectives. Instead, the OSC could more efficiently monitor exempt market activity by:

- harmonizing the reporting requirements across Canada and streamlining the reporting process for investment funds that issue securities on a continuous basis;
- collecting documents that investment fund managers already produce and make available to investors in the ordinary course of their businesses and in accordance with local jurisdiction requirements (*i.e.,* audited annual fund financial statements denominated in the fund's currency); and
- information/dollar amounts should be provided in the investment fund's currency in order to reduce the risks associated with converting values to Canadian dollars.

We note that public funds generally do not disclose information about purchasers to the regulators, so we query why investment funds distributed in the exempt market should be required to do so. For example, we do not see any benefit to requiring the age range of the purchaser as contemplated in Schedule 1 to the F10. Programming changes would be required to calculate this information as only an investor's date of birth is collected to facilitate tax reporting. This will add to the cost and complexity of reporting for issuers. We believe that it is sufficient for regulators to require investment fund managers to confirm which exemptions they have relied on in distributing securities to investors.

ii. Duplicating existing information

Many of the sections in the F10, such as Items 2, 7 and 8, require detailed information about the fund and investment fund manager that, we believe, is already available to the regulators because the information is required to be kept current and filed, and which the CSA already have access to through NRD. Thus, it is not clear why the investment fund manager should have to provide this information again on the F10 since it is already accessible. Similarly, for Item 6 of the F10, the assets under management (**AUM**) that would be reported in 3 of the 4 reporting periods is not an audited value and while it is calculated for management reporting purposes, it is not verified and if provided in good faith, may put the issuer offside with the certification required under Item 18. We believe the OSC is already informed on much of the required reporting and we do not believe it is necessary to charge fund managers $500 per quarter to provide information that is generally already available to the regulators.

We believe a better reporting approach should be developed. For example, there are two basic types of information: fund information, principally included in Items 1 through 9 (**Fund Data**), and the information about its exempt distributions, principally included in Items 10 through 19 (**Distribution Data**). The Fund Data will typically be unchanged from report to report, whereas most of the Distribution Data will be different for each report. It would be much more effective to have these two different types of data handled separately and differently. First, the system could be designed so the investment fund manager can "set up" the fund initially on the web portal with all applicable Fund Data, and update the Fund Data only when information changes. Then, the "high frequency" Distribution Data could be uploaded and filed on a quarterly basis only if there are changes/activity "against" the previously-established record for the fund and if not, filing should continue to be required only annually.

We also recommend the regulators consider other ways to obtain targeted information from investment funds. For example, if the regulators wish to understand the "unregistered" investment fund market better, a more effective and efficient means would be to develop a list of targeted questions and conduct a survey of a sample of investment fund managers. Select a few of those investment managers to meet with, and discuss the market and any issues of regulatory concern.

The Proposed Amendments seek to increase the frequency of reporting from an annual basis to a quarterly basis, however, it is not clear in the Proposed Amendments why annual reporting has not been sufficient. It would be helpful to understand if and how annual reporting previously failed to capture sufficient information or alternatively, what was

ineffective about annual reporting to necessitate a shift to more frequent (and costly) reporting.

We are also concerned about how the increased reporting schedule for exempt distributions will effectively quadruple the OSC's fees for those who currently report. Some investment funds are relatively small in terms of AUM and/or there is not enough activity in them, from one quarter to another, to justify this increased reporting schedule and its associated cost. In our view, investment funds should not be subject to more frequent and detailed reporting requirements.

We also believe that quarterly reporting should not be required since general details about an investment fund (*i.e.,* service providers, investment objectives, structure) change very infrequently (generally no more than once or twice in the lifecycle of a fund, which may be of significant length). Accordingly, we submit an annual report should be more than sufficient to keep the OSC informed.

iii. Electronic reporting

In Alberta, New Brunswick and Saskatchewan, the F10 will be a paper form while in Ontario, this form will be an e-form as stipulated by OSC Rule 11-501 *Electronic Delivery of Documents to the Ontario Securities Commission.* First, the obvious concern with this the inconsistent filing approach required by jurisdiction. Second, the e-form in Ontario aims to be more "user-friendly" and easier to complete; however, the process of data submission would be rendered dramatically easier if it could be accomplished by uploading to the website one or more "flat" data files in prescribed format. Such data files could be generated from the investment fund manager's existing systems, and uploaded quickly, without the need for "copy-typing" from one medium to another. Ideally, this could be provided to all jurisdictions in electronic format.

There is also an issue relating to the choice of acceptable internet browsers available for submitting an e-form. The instructions on the web portal say that only Microsoft's Internet Explorer (**IE**) version 8.0 or later, and Mozilla's Firefox 20 or earlier are acceptable. In particular the system does not work with (i) version 11 of IE, (ii) any version of Google's Chrome browser, or (iii) any version of Apple's Safari browser. In addition to representing a substantial proportion of the overall installed base of web browsers, these other versions/browsers are more up to date and better supported. We recommend the OSC and CSA consider the use of these superior browsers as compatible alternatives to those currently available on the web portal.

2) Should any of the information requested through the Proposed Reports not be required to be provided? Is there any alternative or additional information that should be provided that is not referred to in the Proposed Reports?

No, the PCMA believes the proposed reporting requirements are adequate.

* * *

We thank you for the opportunity to provide you with our comments on the Proposed Amendments and would be pleased to discuss this with you further.

Yours very truly,

Private Capital Markets Association of Canada

"*Brian Koscak*" Chair	"Geoffrey Ritchie" Executive Director	"*Frank Laferriere*" Director
"*Nadine Milne*" Member		

cc: PCMA Canada, Board of Directors