PRIVATE CAPITAL MARKETS ASSOCIATION OF CANADA

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

VIA E-MAIL

June 30, 2014

Alberta Securities Commission
Autorité des marchés financiers
Financial and Consumer Affairs Authority of Saskatchewan

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Dear Sirs and Mesdames:

Re: Multilateral CSA Notice of Publication and Request for Comment - Proposed Amendments to National Instrument 45-106 Prospectus and Registration Exemptions Relating to the Offering Memorandum Exemption in Alberta, Quebec and Saskatchewan, and Reports of Exempt Distribution (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) (**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.

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 (**AI**) 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

Our answers to the questions you have asked in connection with the Proposed Amendments are set out below. We have reproduced the questions for ease of reference.

We note the Participating Jurisdictions are considering changes to the offer memorandum exemption (the **OM Exemption**) as set out in section 2.9 of National Instrument 45-106 *Prospectus and Registration Exemptions* (**NI 45-106**).

1) Under the current framework in Alberta, Québec and Saskatchewan, both individual and non-individual investors are subject to the $10,000 annual investment limit if they do not meet the definition of an eligible investor. Should non-individual investors, such as companies, be subject to the $10,000 limit if they do not qualify as an eligible investor? Please explain.

Non-individual investors, such as companies, should not be subject to the $10,000 limit if they do not qualify as an eligible investor. We believe that the owners/shareholders or board members (on behalf of the owners/shareholders) of a company should be considered sufficiently sophisticated to assess the risks of an investment, without being subjected to this kind of investment limit.

Moreover, there are situations, including for estate and planning purposes, where one or more individuals may set up a company that does not satisfy the eligible investor test, when the individuals themselves would qualify.

2) Are there circumstances where it would be suitable for an individual eligible investor who is not an accredited investor and not eligible to invest under the FFBA exemption to invest more than $30,000 per year under the OM Exemption? If so, please describe them.

Yes, there are circumstances when it would be suitable for an investor to invest more than $30,000 under the OM Exemption. The PCMA is against the imposition of any investment caps or limits on eligible investors for the reasons discussed below.

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

The PCMA submits an investment cap would wrongly treat all eligible investors as a single homogenous cohort. There is a significant differences between eligible investors who make:

i. $75,000 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. $199,000 or more per annum for the last two years and contemplates making the same or more in the year of investment (**Situation B**).

As one 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. An investor in Situation B may actually be able to invest much more than the proposed $30,000 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 may unfairly restrict certain types of eligible investors.

(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 have the opposite effect and discourage investors from working with a registered dealer.

For example, consider an issuer who engages a registered dealer to raise capital. The dealer finds 20 investors who each invest $20,000 since in their assessment an investment of more than $20,000 would not be suitable for those investors. The issuer (or the investor themselves) may want to invest more up to the $30,000 limit so the issuer either goes around the dealer and accepts a direct or additional subscription from those investors via a non-brokered private placement (during the offering and perhaps 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 can raise funds from an investor up to the cap, notwithstanding whether the amount is suitable for the investor. Such misalignment between issuers and dealers 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 Participating Jurisdictions adopt investment caps, then the PCMA believes no such limits should apply when a registrant is involved in an offering. This should include EMDs who seek to sell securities on the internet under existing prospectus exemptions, such as the OM Exemption.

We are concerned that the approach of imposing investment caps is contrary to the principle of the legal obligations dealers, as registrants, have under applicable securities law to ensure that an investment is suitable for an investor. Suitability is a fundamental responsibility of a registrant under NI 31-103 but only a registrant has the legal responsibility to make sure an investment is suitable. The relevant factors upon which that suitability assessment is made include: an investor's age, investment needs, investment time horizon and risk tolerance. An investment cap ignores these factors and how they should inform an investors reasonable or suitable limits in a certain transaction. It is also not clear why a registrant can recommend an investment based on their suitability analysis for amounts under the investment cap but would be barred from doing so when an investment amount is in excess of the cap? As such, we find an investment cap inconsistent with a registrant's suitability obligations under applicable securities law.

(d) If investment caps are introduced, they should apply per amounts raised per issuer

If the Participating Jurisdictions adopt investment caps, then the PCMA believes they should apply for all amounts raised by an issuer during an annual period and not for any and all issuers during an annual period. This would alleviate some, but not all, of the concerns we have with adopting a fixed investment cap per investor. However, we are fundamentally opposed to the introduction of an investment limit as proposed by the OSC.

(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 ASC. We are not aware of any other data from any other CSA member where the OM 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, 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.

3) Given the costs associated with doing so, how likely is it that an individual would create a corporation or other entity to circumvent the $30,000 cap?

While it is unlikely investors will attempt this, it is not difficult for an investor to incorporate and organize a company in order to circumvent the $30,000 cap. For example, even at a cost of $1,000 to incorporate and organize a new company, such costs would not be a substantial deterrent. Should an investor take this path, the investor should be accountable for his or her own actions. In any event, we are unclear how a Canadian securities regulator will determine whether an investor created a corporation for purposes of circumventing the investment cap versus for valid business or personal reasons.

4) Investors who do not qualify as eligible investors based on net income or net assets can qualify as eligible investors on the basis of advice from a registered investment dealer. In what circumstances do investors actually seek and receive advice from a registered investment dealer? Does this introduce any complications or difficulties?

We have no evidence on how frequently this type of advice is provided by an investment dealer. We are of the view that more EMDs than investment dealers are involved in private placements using the OM Exemption.

We do know that a significant number of EMDs are involved in private placements in reliance on the OM Exemption and, accordingly, they may be at least, or likely more proficient in managing the related KYP and client KYC information than investment dealers. It is not clear why the CSA has determined that an investment dealer may advise a client as an eligibility advisor but an EMD cannot. We note that the securities in question are exempt securities and we believe EMDs have as much, or likely more expertise and capability to provide eligibility advice to clients regarding exempt securities than an IIROC dealer principally trading public securities. If the CSA feels differently we ask that you please explain why this different treatment is justified.

One of the purposes of implementing NI 31-103 was to provide a consistent registration regime for dealers across all categories – in particular in respect of the core obligations of KYC, KYP and

suitability. It does not follow that those dealers registered as EMDs should be precluded from providing suitability advice or eligibility advice to clients on the products in which they are registered to trade. The PCMA believes that EMDs should be included as qualified eligibility advisors to ensure consistency in the application of the rules and to give effect to the principle of qualifying as an eligible investor based on an investor receiving suitability advice from a registered dealer (EMD or investment dealer).

5) The eligible investor definition includes persons that have a net income of $75,000 and persons that have net assets of $400,000. These income and asset thresholds currently apply equally to individual and non-individual investors, such as companies.

a) Should the $75,000 income threshold only apply to individuals? If so, please explain.

b) Should the net asset amount exclude the value of the principal residence for individual investors? If so, should the $400,000 net asset threshold be lowered as a result?

c) Should pensions be included in the net asset test under the OM Exemption? Please provide the basis for your answer.

(a) No - the $75,000 income threshold should apply to both individuals and companies as we have discussed in #1 above.

(b) No - the 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 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 the 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 with the security of significant equity in their home could be disadvantaged over investors who may have taken equity out of their principal residence to acquire an asset or security which would then be eligible for inclusion as net assets for purposes of the eligible investor test. It would be concerning to see the CSA enact rules that limit the investment options and potentially discourage investors who have the security of equity in their own home.

Many Canadian 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. We believe situations where investors are encouraged to place the ownership of their principle residence at risk in order to invest according to a certain exemption will almost surely fail a suitability assessment and therefore regulators already have a means to address any such actions within the industry.

In the absence of any specific evidence, the PCMA believes the principal residence of an investor should remain included within the definition of net assets to maximize the harmonization of the rule across Canada.

(c) To the extent a pension plan has a valuation that is reported, this is a legitimate asset that should be included in the eligible investor test. In fact, self-directed pension plans are a common source of funds that are used by both eligible and non-eligible investors to participate in private offerings. The presence of a pension is a relevant criteria in a KYC and suitability assessment and should contribute to an investors ability to invest other funds in the exempt market, not detract.

6) The FCAA would appreciate feedback on whether lawyers and public accountants should continue to be considered "eligibility advisers" in Saskatchewan for purposes of the OM Exemption? Please provide the basis for your opinion.

Yes - the PCMA believes that lawyers and accountants should continue to be considered eligibility advisers in Saskatchewan. Lawyers and/or accountants are both bound by rules of /professional responsibility when they provide legal advice. What is not clear is how often investors seek eligibility advice from lawyers and/or accountants in Saskatchewan, and if sought, whether it is in fact provided. Some lawyers and/or accountants may not have the knowledge or training to provide eligibility advice.

7) How common is it for an issuer that relies on the OM Exemption to make annual financial statements available to security holders?

a) How is this done? Are they delivered?

b) Are those financial statements typically audited?

c) If the financial statements are not typically audited, is there an auditor involved and, if

so, what standard of engagement is typically applied?

d) Do issuers that prepared financial statements in accordance with IFRS for inclusion in their OMs typically continue to prepare financial statements in accordance with IFRS or do they transition to generally accepted accounting principles for private enterprises (ASPE)?

e) Is it common for security holders to request annual financial statements? Do they request audited financial statements?

f) What do you estimate as the annual cost of preparing the proposed audited annual financial statements?

g) Do you anticipate that issuers will mail annual financial statements to security holders or place them on a website?

h) What do you estimate as the cost of making annual financial statements available to security holders?

Assumptions: For purposes of this Question 7, we have assumed based on the commentary in the Proposed Amendments that: (a) the questions below relate to any ongoing financial statement disclosure that may or may not be provided by an issuer after an offering has been completed where capital was raised under the OM Exemption. We note that the OM Exemption requires the inclusion of audited financial statements save and except under specific circumstances as set out in the blanket orders (as referenced in Question 16 below); and (b) private issuers (or non-offering corporations under the Ontario *Business Corporations Act*) are exempt from the audited financial statement requirements if all of the shareholders have consented in writing to the exemption for that financial year.

7) How common is it for an issuer that relies on the OM Exemption to make annual financial statements available to security holders?

If a dealer is involved, then it would typically require an issuer that raised funds under the OM Exemption to continue to provide audited annual financial statements to its investors.
If a dealer is not involved, the answer depends on a number of factors, including whether certain sophisticated investors are involved, such as angel and/or venture capital investors, who would typically require audited annual financial statements as a condition of investing.

If no dealer or angel/venture investor or lender is involved, the investor or lender, where certain borrowing thresholds have been reached would typically request annual financial statements so they have an idea of the issuer's financial position at least once a year, or more regularly if available. Our view is that issuers generally do not have an issue with providing financial statements to investors, the issue is whether they are audited and that is typically a cost issue (see answer in 7(b)).

(a) How is this done? Are they delivered?

If an issuer is a corporation, its financial statements are typically delivered to shareholders electronically or by mail with its meeting materials in advance of its annual general meeting. Many issuers are now either e-mailing the materials or having the materials available for viewing on a web portal or platform.

(b) Are those financial statements typically audited?

Whether the financial statements of an issuer are audited depends on the financial situation of the company, any specific investor requirements, and the stage in which the company is operating. Most start-up companies and small and medium sized enterprises (**SMEs**) do not have the resources to pay for audited financial statements – opting instead for either financial statements created in-house or a review engagement from outside auditors. If they are contemplating an investment from a venture capital firm or investment fund, then an audit may be a pre-requisite to such an investment, and if so, they will retain an assurance firm to conduct an audit.

Many investment funds and venture capital firms require audits to be conducted on an annual basis after the initial investment, however, if a company is struggling financially, and the resources to spend on an audit are best used in retaining valuable employees and/or suppliers, then the shareholders may have an option to waive the audit requirement for a time period. This would be determined by the shareholders at an annual meeting if the issuer was a corporate issuer. If the issuer was a limited partnership, trust or other form of legal entity, one would have to review its constating documents to consider any audit requirement.

(c) If the financial statements are not typically audited, is there an auditor involved and, if so, what standard of engagement is typically applied?

Whether an auditor is involved depends on the stage of the company, (*e.g.,* start-up, growth or emerging company, however, an engagement review could be provided by an auditor at a lesser cost and is typically the second step taken (after the in-house prepared balance sheet) as a company

grows. We note the time, money and effort involved in preparing audited financial statements is challenging for startups and SMEs, given their (typical) limited resources.

(d) Do issuers that prepared financial statements in accordance with IFRS for inclusion in their OMs typically continue to prepare financial statements in accordance with IFRS or do they transition to generally accepted accounting principles for private enterprises (ASPE)?

It should be noted that in Alberta, the experience is that most issuers that are not reporting issuers use ASPE. However, there are some that use IFRS. Typically, where issuers have prepared financial statements in accordance with IFRS for inclusion in their OMs, they continue to prepare their financial statements on the same basis and do not transition to ASPE.

(e) Is it common for security holders to request annual financial statements? Do they request audited financial statements?

Yes - securityholders commonly request annual financial statements and, depending on a number of factors, would prefer audited financial statements. Whether the financial statements are audited or not depends on a number of factors, including whether they are required under corporate law or the constating documents of the issuer, or investors negotiated the continuing obligation to provide audited financial statements.

(f) What do you estimate as the annual cost of preparing the proposed audited annual financial statements?

The cost of preparing audited financial statements depends on a number of factors including, the complexity of the company, the stage of company's growth, and whether previous financial statements have been prepared. The first audited financial statement can very time-consuming. For a smaller company that has $1M in revenue per year, and approximately 50 employees, an audit (and related corporate tax submission) can be in excess of $30,000. It could easily be more and really depends on the state of preparedness of the underlying financial information as provided to the auditors and the capability and resources of the issuer in working with an auditor.

(g) Do you anticipate that issuers will mail annual financial statements to security holders or place them on a website?

As record-keeping for issuers becomes less paper-oriented and more electronic and more platforms are available to safely store documents in a secure manner, issuers will offer a variety of corporate

documents (including financial statements and share certificates) in an on-line environment. The process of doing so is less expensive and more efficient, and companies are looking for ways to minimize costs and streamline investor communications.

(h) What do you estimate as the cost of making annual financial statements available to security holders?

The cost varies depending on the distribution channel. Obviously posting audited financial statements online is less expensive than printing and mailing them. With the advance of technology, most people would be satisfied if they could review and print financial statements from a secure website of the issuer that is password protected.

8) Under the Proposed Amendments, issuers relying on the OM Exemption would be required to deliver annual financial statements until the issuer either becomes a reporting issuer or ceases to carry on business. Are there other situations when it would be appropriate to no longer require ongoing annual financial statements for such issuers? If so, please describe them.

It would be inappropriate to require an issuer to provide ongoing annual financial statements in circumstances where it would impose undue hardship on an issuer. For example, there are many circumstances where start-ups and SMEs, after having secured early stage funding, run into financial difficulties down the road, leading to situations where an issuer might not have the resources to provide annual financial statements. An exception should be created in such circumstances and should require notice to be provided to shareholders which, explains the reason for the change /delay, and reasonable estimate of, if/when the annual financial statements would be provided.

9) How do issuers relying on the OM Exemption typically communicate with their security holders? Do they maintain websites?

Issuers relying on the OM Exemption are increasingly communicating with their shareholders by e-mail (rather than regular mail) and some are establishing a documents database through an online platform. The latter is becoming more common as issuers seek ways to become more efficient and reduce costs in communicating with their shareholders, while maintaining transparency and establishing good governance practices in contemplation of a further funding or later exit event.

10) Should issuers be permitted to cease providing annual financial statements to their security holders after proceeds of a distribution are fully spent? If so, is there a period of time after which it is reasonable to assume that the proceeds of a distribution under the OM Exemption will have been fully spent?

An issuer that accesses the private capital markets under the OM Exemption should have a continuing obligation to provide annual financial statements to its investors. It does not make sense that once shareholders who have been provided audited financial statements in the OM would then no longer continue to have a right to audited financial statements just because the proceeds raised under the OM Exemption have been fully spent. It is also unclear how one would determine whether such funds were spent.

11) Should non-individual investors (e.g., companies or trusts) be required to sign a risk acknowledgment form? Please explain.

No- we believe this is an unnecessary burden on these investors with little gain or benefit.

12) Should "permitted clients", as defined in National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Obligations be required to sign a risk acknowledgement form? Please explain.

No- we believe this is an unnecessary burden on these investors with little gain or benefit.

13) Should non-redeemable investment funds continue to be permitted to use the OM Exemption?

Yes - investment funds allow investors to pool their capital and invest in various ventures, whether in SMEs, real estate or other asset classes, and this is important for investors and our economy.

The PCMA does not support any restriction on investment funds under the OM Exemption for the reasons set out below.

(a) Investments funds are an important financing vehicle

Investment funds are an important financing vehicle that use the OM Exemption and should be continued, especially in Western Canada. We respectfully submit that prohibiting investment funds is in appropriate and overreaching if the real concerns involve disclosure and related issuer matters. We believe that the CSA should do a review of the form disclosure requirements involving different types of issuers and discuss various safeguards and controls to manage any conflicts of interest where a dealer is related to an issuer.

(b) Investment funds can be used to help SMEs

Investment funds can be used to help finance SMEs and provide diversification of risk for investors. Some investors would like to participate in an investment vehicle that invests in equity or debt securities of SMEs which would not be permitted if the investment fund prohibition is adopted. Issuing debt securities or securities that are convertible into common shares of an issuer should be encouraged by the CSA which would provide certain types of SMEs access to capital and investors with a diversified portfolio of companies.

(c) Investment funds that have a registrant adequately protect investors

PCMA believes that certain investment funds that are managed by a portfolio manager (**PM**) adequately protect investors and such investment funds should not be prohibited under the OM Exemption. The involvement of a registrant provides added protections for investors.

It is not clear why issuers such as flow-through limited partnerships (**FTLPs**), which are investment funds and utilize a PM, should be barred from using the OM Exemption. The investment fund prohibition will have serious capital raising implications for FTLPs and issuers particularly in the mining and oil and gas sectors and a significant amount of capital is raised in Canada under the OM Exemption for such issuers.

(d) The definition of the term "investment fund" is not well defined or agreed upon by Canadian securities regulators

The term "*investment fund*" is defined under securities legislation and means a mutual fund and a non-redeemable investment fund. Under securities legislation, a "***non-redeemable investment fund***" means an issuer (a) whose primary purpose is to invest money provided by its security holders, (b) that does not invest with a view to exercising control of an issuer or with a view to being actively involved in the management of an issuer, and (c) who is not a mutual fund.

We note there is disagreement about these investment fund definitions between the corporate finance and investment funds branches within certain CSA members and between CSA members. Although there has been some recent guidance provided by certain CSA members involving mortgage investment corporations, it is still not consistently applied within, and between CSA members. This uncertainty is not in the public interest.

We are concerned that uncertainty could lead to an offering of securities by a fund that a market participant does not believe is an "investment fund" (often based on advice of counsel and/or opinions solicited from an investment funds branch or corporate finance branch of a CSA member) and have another CSA member object to such an offering and require it to be withdrawn. This uncertainty and potential to force the withdrawal of an offering by an issuer relying on the OM Exemption is inconsistent with our mutual interests of fair and efficient capital markets.

14) Are there certain types of issuers that should be excluded from using the OM Exemption?

No, all issuers, whether investment funds, corporate issuers, trust or limited partnerships should be able to use the OM Exemption regardless of industry or asset class.

15) Should issuers that are related to registrants that are involved in the sale of the issuer's securities under the OM Exemption be permitted to continue using the OM Exemption?

The PCMA strongly believes there should be no restriction on registrants distributing the securities of related issuers, provided that the issuer addresses its conflict by providing the requisite disclosure as required under applicable securities law. We note this is the practice across major sections of our capital markets and the proposed changes are inconsistent with that reality.

In addition to disclosure, there are various safeguards that can be put into place to manage conflicts of interest. We strongly believe this is an industry issue that needs to be addressed generally, not just under the OM Exemption, but under all prospectus exemptions. We remind the Participating Jurisdictions of the work that was done in the mutual fund industry in dealing with conflicts of interest, which we note, has successfully addressed these scenarios.

Banks, investment dealers and mutual fund dealers regularly sell proprietary product and therefore banning EMDs from selling securities of related issuers is inconsistent and inadequately addresses a matter that requires a more thorough analysis outside of any one prospectus exemption.

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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"	*"Geoffrey Ritchie"*	*"Stephen Warden, CA"*
Chair	Executive Director	Director

"Sean Du Plessis, CA"
Member

cc: PCMA Canada, Board of Directors