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Larissa Streu
Senior Legal Counsel, Corporate Finance
British Columbia Securities Commission
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Me Philippe Lebel
Corporate Secretary and Executive Director, Legal Affairs
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Dear: Ms. Streu/Me Lebel:

RE: CSA Notice and Request for Comment Proposed Amendments to National Instrument 45-106 Prospectus Exemptions to introduce the Listed Issuer Financing Exemption (the “Proposal”)

The Investment Industry Association of Canada appreciates the opportunity to comment on the Proposal.

Summary: The IIAC supports CSA efforts to improve the efficiencies of Canadian capital markets. We are concerned, however, that the by removing registrant due diligence, while permitting unsophisticated investors to purchase such securities without a registered dealer, the Proposal lacks sufficient safeguards to ensure adequate investor protection.

Recommendations: The CSA should not proceed with the Proposal. However, it should continue to develop initiatives that will improve the efficiency of the regulatory system for all stakeholders, such as the current amendments to the Continuous Disclosure Obligations, Access Equals Delivery proposals as well as amendments to the Accredited Investor exemption as adopted in Alberta and Saskatchewan.

The IIAC supports the efforts of the CSA to examine and adjust the current regulatory system to facilitate more efficient means for Canadian issuers to raise capital. To that end, initiatives such

as the recent Proposed Amendments to National Instrument 51-102 *Continuous Disclosure Obligations*, CSA Consultation Paper 51-405 - *Consideration of an Access Equals Delivery Model for Non-Investment Fund Reporting Issuers*, and the amendments related to the Business Acquisition Report requirements enacted in 2020 are measures that are consistent with this objective.

The stated objectives underpinning the Proposal are to reduce the cost of accessing public markets, particularly by smaller issuers, and to increase the availability of such investments to a wider universe of retail investors, who may not qualify for existing prospectus exemptions.

While we appreciate the objectives of the proposed Listed Issuer Exemption, we believe that there are inherent flaws in the Proposal that will have unintended consequences which could compromise investor protection, leading to outcomes detrimental to the Canadian capital markets.

We believe the Proposal cannot achieve these objectives without introducing a significant risk to unsophisticated investors who may have limited means, potentially compromising the reputation of the Canadian capital markets.

The following elements of the Proposal raise concerns related to investor protection and the practicality of use of the exemption.

1. No gatekeeper disclosure oversight – The Proposal does not mandate involvement of a registrant with obligations to undertake due diligence to ensure the integrity of the continuous disclosure and offering document upon which the offering is based. This oversight is particularly important in respect of the small issuers for which this exemption is designed. These issuers are less likely to have the resources to ensure their disclosure is sufficiently complete and robust to support a significant offering to retail investors. The lack of a required third-party review introduces risk for those relying on the disclosure for a potentially significant financial investment.
2. No regulatory review – Issuers using the exemption are not subject to any concurrent regulatory review to ensure that there are no material gaps in disclosure. This, combined with the potential absence of registrant due diligence for the disclosure underpinning the offering, introduces significant risk in the process.
3. No gatekeeper investor oversight – Issuers may sell securities under this exemption directly to investors or may potentially use an unregistered “finder” pursuant to exemptions in certain provinces to do so. The Proposal expands the universe of potential investors beyond the usual accredited investors participating in such offerings yet does not require a registered dealer with Know-Your-Client and Know-Your Product obligations to ensure the investment in a small issuer that has not been subject to due diligence is appropriate for such investors.
4. No investor qualification – Unlike other prospectus exemptions, the potential investors are not “qualified” in any manner based on sophistication, ability to withstand loss, or relationship to the issuer. Permitting small issuers to issue free trading securities to such potentially unsophisticated and unqualified investors without the due diligence, advisor regulatory obligations, regulatory review, or purchase limitations introduces significant risk of significant financial loss for those least able to understand the risk and recover from the loss.

5. No hold period – We expect that this exemption would essentially replace a subset of private placements issued to qualified accredited investors with hold periods to allow issuance of free trading securities to non-qualified investors.
6. Appropriate due diligence will reduce cost savings – It has been the observation of our members that financings conducted through issuers without the benefit of registrant due diligence are often non-compliant. Although the Proposal does not preclude the use of registrants to undertake the offering, the cost of conducting appropriate due diligence on the issuer and investor will largely negate the cost savings anticipated by the Proposal.

We support the CSA's efforts to support Canadian capital markets by increasing regulatory efficiencies and decreasing unnecessary regulatory burdens. However, the potential cost savings to a subset of issuers do not present a reasonable balance to the investor protection risks inherent in the Proposal.

As noted above, recent initiatives undertaken by the CSA have been helpful in this regard. We recommend that the CSA continue to work within the existing prospectus framework to improve efficiencies. As an example, we suggest expanding the widely used Accredited Investor prospectus exemption to include factors such as education and investment experience, similar to what has been implemented in Alberta and Saskatchewan.

Thank you for considering our comments.

Sincerely

Susan Copland