FAIR | Canadian Foundation *for* Advancement *of* Investor Rights

July 6, 2015

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Nova Scotia Securities Commission
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Halifax, Nova Scotia
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RE: Request for Comment on Proposed Amendments to the Offering Memorandum Exemption

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FAIR Canada is pleased to offer comments on the proposed amendments to National Instrument 45-106 Prospectus Exemptions regarding the Offering Memorandum as set out in the Nova Scotia Securities Commission Notice and Request for Comment dated May 7, 2015 (the "Notice").

FAIR Canada is a national, non-profit organization dedicated to putting investors first. As a voice of Canadian investors, FAIR Canada is committed to advocating for stronger investor protections in securities regulation. Visit www.faircanada.ca for more information.

1. Harmonization of Offering Memorandum "(OM") Exemption Requirements

Harmonization Premature

1.1. FAIR Canada notes that the Nova Scotia Securities Commission ("NSSC") has indicated it would like to harmonize its rules regarding the Offering Memorandum prospectus exemption (the "OM" exemption) with those of Alberta, Saskatchewan, Ontario, New Brunswick and Quebec.

1.2. It is our understanding that none of those jurisdictions have, to date, finalized their rules regarding the Offering Memorandum. As of today, therefore, it is not clear what rules will be adopted and what rules the NSSC will be determining to harmonize with. In addition, not all of the proposed rules that are set out in the Notice are the same as those of the other jurisdictions. Nonetheless, FAIR Canada commends the NSSC for consulting with stakeholders regarding proposed amendments to the OM exemption.

1.3. FAIR Canada urges regulators and governments to approach harmonization with the goal of furthering the key mandate of investor protection and to not engage in a harmonization process at the expense of adequate investor protection.

Adequate Investor Protection Key to Real and Sustainable Capital Formation

1.4. FAIR Canada reminds securities regulators that their key mandate is that of investor protection, and that this mandate obligates securities regulators to undertake a review of the level of investor

protection afforded under the OM Exemption in the jurisdictions where it is available. Such a review is needed in light of the widespread serious defects in the OMs that are used and a lack of compliance by exempt market dealers ("EMDs") with their regulatory obligations (including know-your-client and know-your product suitability obligations) and serious conflicts of interest not being avoided, managed or disclosed by the seller.

1.5. FAIR Canada has noted in its recent fraud report that there is a lack of empirical data to determine the incidence of fraud, misrepresentation and resulting losses suffered by investors as a result of investing in securities through purported reliance upon prospectus exemptions. However, based on media reports in recent years, there appears to be serious and widespread fraud and financial losses linked to the OM. Three scandals reported in the press in 2013 alone amounted to some $500 million in retail investor losses. In addition, information from Alberta's securities commission released with Multilateral CSA Notice dated March 20, 2014 noted that there have been "…numerous complaints from investors that have invested significant amounts under the OM Exemption and incurred significant losses."[1]

1.6. Exemptions should only be permitted if there is adequate investor protection; otherwise real capital formation, where monies are invested in productive assets (leading to increased jobs and economic growth) will not occur. Investor protection mechanisms are not an impediment to capital raising efforts but rather an essential feature of an efficient and effective market in which investors have confidence. Ignoring the need for investor protection will only make the exempt market more inefficient and further reduce investor confidence in our markets.

1.7. We urge the NSSC to reform its OM Exemption in a manner that provides adequate investor protection. We have set out in our submission dated June 18, 2014 in response to Multilateral CSA Notice published March 20, 2014[2] and in our submission to the OSC dated June 18, 2014 in response to their Notice and Request for Comments published March 20, 2014[3] comments to improve the proposed requirements so that investors will be better protected and the result will be more efficient markets in which investors have confidence. We urge you to give serious consideration to our recommendations.

1.8. We set out below comments on the proposed requirements you have proposed (provided in Table 1 of the Notice) to the extent they differ from those of the other jurisdictions. To the extent they are the same as the proposed requirements of the other jurisdictions, we refer you to our June 18, 2014 submissions for our recommendations.

Eligible Investors Who Obtain Advice- Need Objective, Independent Advice in Best Interest of Investors

1.9. Under the NSSC proposal, investors who are "eligible investors" and who obtain advice from an EMD, IIROC dealer or portfolio manager would be permitted to invest up to $100,000. It is not made clear whether this limit is per investment, per calendar year, or annually.

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1 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, published March 20, 2014, at Annex B; available online at Annex B; available online at http://www.lautorite.qc.ca/files//pdf/reglementation/valeurs-mobilieres/45-106/2014-03-20/2014mars20-45-106-avis-cons-om-en.pdf.

2 FAIR Canada submission to the Alberta Securities Commission, the Autorité des marchés financiers and the Financial and Consumer Services Commission dated June 18, 2014, available online at http://faircanada.ca/wp-content/uploads/2011/01/140618-final-comments-to-CSA-re-OM-exemption-2.pdf.

3 FAIR Canada submission to the OSC dated June 18, 2014; available online at http://faircanada.ca/wp-content/uploads/2011/01/FAIR-Canada-submission-re-OSC-Proposed-Prospectus-Exemptions-v1.pdf.

1.10. FAIR Canada recommends that the advice must come from a registrant who has an obligation (either statutorily or contractually) to act in the client's best interest. In addition, to qualify, the proposed exempt investment should be recommended by the registrant as an investment that is in the best interest of the retail investor who is an "eligible investor". This requirement should be monitored by requiring the provision of information to the commission on the use of the qualifying criteria including the name of the registrant who provided the advice.

1.11. If such requirement is going to be pursued in the absence of a best interest duty, FAIR Canada does not support allowing EMDs to discharge this obligation to provide advice given:

(1) EMDs may distribute securities of "related issuers" and "connected issuers" and thus are subject to conflicts of interest which involve misaligned incentives (that is, frequent conflicts of interest between that of the EMD and the investor) and, as a result, investors will not obtain objective "advice";

(2) compliance reviews by CSA members have found significant deficiencies in how EMDs address conflicts of interest with 21% of registered firms that were sampled being deficient in how they address conflicts of interest including:

- Registered firms considered themselves to operate independently, and assumed that they did not have relationships that could potentially present a conflict of interest requiring disclosure, but this was not the case.
- Registered firms indicated that their policies and procedures manual or other internal policies described their conflicts, but acknowledged that they did not disclose these conflicts to clients.
- EMDs indicated that the issuer's offering documents adequately described the conflicts of interest, but this was not the case.
- Registered firms disclosed that they had conflicts, but they did not describe the conflicts or explain how they were addressing them.
- Registered firms provided an insufficient or unclear explanation about their conflicts and did not discuss the potential impact on clients.
- Registered firms disclosed the conflicts of interest at the individual dealing or advising level, but did not consider and disclose conflicts of interest at the firm level.

(3) EMDs have a low level of compliance with existing know-your-client and know-your-product obligations, as found in compliance sweeps by regulators;

(4) There is no published report which indicates from the securities regulators that the above-noted problems have been adequately addressed; and

(5) EMDs are not members of an SRO, which would provide some level of protection to investors.

In light of the foregoing, EMDS are inappropriate registrants to discharge this obligation.

We commend the NSSC for recognizing that the current requirements do not provide adequate investor protection and for proposing changes to make its capital market more efficient and one in which investors have confidence.

We thank you for the opportunity to provide our comments and views in this submission. We welcome its public posting and would be pleased to discuss this letter with you at your convenience. Feel free to contact Neil Gross at 416-214-3408/ neil.gross@faircanada.ca or Marian Passmore at 416-214-3441/ marian.passmore@faircanada.ca.

Sincerely,

Canadian Foundation for Advancement of Investor Rights

CC: British Columbia Securities Commission
Alberta Securities Commission
Saskatchewan Financial Services Commission
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
New Brunswick Securities Commission
Registrar of Securities, Prince Edward Island
Superintendent of Securities, Newfoundland and Labrador
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Yukon Territory
Superintendent of Securities, Nunavut

June 6, 2015

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Regarding: Notice No. 45-716 - NOTICE AND REQUEST FOR COMMENT NOVA SCOTIA SECURITIES COMMISSION NATIONAL INSTRUMENT 45-106 PROSPECTUS EXEMPTIONS OFFERING MEMORANDUM

Dear Mr. Redden,

Aroi operates as a very small Mortgage Investment Corporation solely in Nova Scotia and has relied on the OM exemption for the majority of investment raised over the past 4 years from more than 50 shareholders.

Aroi is permitted by Canadian Western Trust to be held in self directed RRSP, TFSA, and LRSP tax shelters.

For ease of reading I'll itemize my comments on each of the proposed requirements in the same order they are presented in Table 1 of your notice:

Annual Limits for less than eligible investors

- These limits only impact shareholders responsible for 3% of the investment to date in Aroi and will not have a material impact on the Company's ability to raise capital going forward.

Annual Limits for Eligible investors

- 60% of the investment to date in Aroi has been received from investors who meet the eligible investor criteria and fall below accredited investor thresholds.
- These 20 shareholders have an average investment in the company of $60,000 and many of them have invested in tandem with spouses for a household average closer to $120,000
- An annual limit closer to $75,000 will reduce the impact on aroi going forward.
- **Amendment of the Nova Scotia $150,000 investment exemption to apply to an aggregate amount invested by a household is another way to mitigate the detrimental impact of this limit and afford families to continue to maximize TFSA**

investments.

Eligible investors with advice from exempt market dealers, IIROC dealers or portfolio managers may invest up to $100,000

- The additional overhead cost incurred to carry mandatory personnel in-house to comply with requirements to be an “exempt market issuer” and as a result distribute through “exempt market dealers” is in excess of $100,000 per year. This is unaffordable for a company with revenue of $500,000 and will negatively affect shareholder returns.
- If the regulator is not willing to permit an arm's length party that is not motivated by commissions (accounting or law firms?) to provide this advice, the entire advice clause should be eliminated as it is unfair to small Corporations who issue their own securities.

Annual audited financial statements requirement

- Aroi has provided audited financial statements to shareholders since Incorporation and plans to continue to do so.
- This is a tremendously positive step for the market as many past frauds have been perpetuated with unaudited financial statements.

Notice of fundamental events

- Aroi provides quarterly updates to shareholders and agrees with this requirement.

Marketing materials incorporated into the OM and filed with the regulator

- This requirement makes sense and should provide peace of mind for potential investors.

Only Mutual funds that are reporting issuers and non-redeemable investment funds will be allowed

- This will have no effect on Aroi as it is not an investment fund.

Having only received notification of this request for comment period on July 3rd from an industry contact I suggest the NSSC provide future notification to the contact persons identified on the exempt distribution notice, which Aroi files quarterly.

Thank you for considering my comments,

Matthew Hennigar

Vice President

Aroi Mortgage Investment Corporation Inc.

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Re: NSSC Proposed Amendments to NI 45-106

Please accept this letter and attached report as a submission in response to the NSSC comment period dated May 7, 2015. Specifically, as a response to the publication Notice 45-716: Notice and Request for Comment NSSC National Instrument 45-106 Prospectus Exemptions, Offering Memorandum.

This topic is fundamentally the same as two comment periods last year: Multilateral CSA Notice of publication and Request for Comment: Proposed Amendments to NI 45-106 Relating to the Offering Memorandum Exemption in Alberta, New Brunswick and Saskatchewan, Reports of Exempt Distribution; as well as the Introduction of Proposed Prospectus Exemptions Proposed Reports of Exempt Distribution in Ontario. Therefore, we have included the report we drafted for them, our position is unchanged. We also encourage you to read the 916 comment letters they received from investors and industry regarding this CSA/OSC comment periods.

We applaud all your proposed changes to the OM exemption, except for your proposed limits. While these proposed limits are much more reasonable as they have more flexibility than those proposed last year by the CSA and OSC, we still feel suitability is a better practice for investor protection and investor rights. If you have any questions about this submission, please feel free to contact Cora Pettipas at: 403-992-9809.

Regards,

Craig Skauge
President & Chair

Cora Pettipas DBA (candidate) CFP, FCSI, MSc,
Vice President

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1. Executive Summary

The biggest risk to the Exempt Market at present is regulator risk. Regulators have a central role in shaping the Exempt Market, as "Society entrusts regulatory and enforcement agencies with awesome powers. They can impose economic penalties, place liens upon or seize property, limit business practices, suspend professional licenses, destroy livelihoods."[1] NEMA is concerned about the policies proposed for NI 45-106, especially the proposed investor contribution limits for subscriptions made via the Offering Memorandum (OM) Exemption.

While we understand the intention of the proposed changes, specifically investor limits, are intended to create investor protection, they actually demean it. The proposed rules create investor restriction, not protection. Investor protection would be better served through continuance with the newly introduced suitability regime under NI 31-103, complemented by educational outreach for registrants and investors, along with annual disclosure for issuers (as proposed).

The proposed limits are based on several false assumptions regarding investor protection and the Exempt Market that we address in this submission. Canadian securities laws are reportedly principles based, as seen in the spirit of NI 31-103. The proposals of investor limits are rules based, creating a dual (and contradictory) compliance regime. Assumptions about the infallibility of the Prospectus regime, about more rules equating to better investor protection, and that wealth is a proxy for investor sophistication are challenged in this submission. The most important assumption we wish to challenge is that the current NI 31-103 regime is inadequately protecting investors and that these limits are needed.

This report highlights how the Exempt Market has changed in the past few years due to NI 31-103. The Exempt Market is still in its infancy and the actions of regulators at this key time in its growth could cause significant advancement, or detriment, to the capital markets and the Canadian economy as a whole.

2. Process of Compiling this Report

This letter has been a result of extensive qualitative research by the National Exempt Market Association (NEMA) and its members. During the ninety day comment period, we have held three town halls nationally to discuss these proposals with industry. We have had meetings with approximately sixty stakeholders, industry leaders, and other related associations. We have presented and had consultation sessions with six of the largest Exempt Market Dealers (EMDs) accounting for 270 Dealing Representatives (DRs). At the time this letter was written, we read through and discussed the content in hundreds of letters written by our members and Exempt Market investors. The balance of this submission will overview key principles found in our research and then proceeds with answering the specific questions in the CSA and OSC proposals. Appendixes are then provided to provide clarification on this material.

[1] Malcolm K. Sparrow. The Regulatory Craft: Controlling Risks, Solving Problems, and Managing Compliance (Kindle Locations 241-242). Kindle Edition. Locations 186-187).

3. Principles Based versus Rules Based Regulation

3.1. How it Effects the Exempt Market

Our securities laws are principles based for a reason. "Rules beget exceptions and exceptions beget rules. Even reasonable regulatory protections, through some inescapable logic, grow ever more numerous and complex. Eventually, and some say inevitably, the rule-based system becomes top heavy and turns into an economic liability."[2] Malcom Sparrow, Chair of the Harvard Executive Program, *Strategic Management of Regulatory & Enforcement Agencies* argues against regulation that is "nitpicky, unreasonable, unnecessarily adversarial, rigidly bureaucratic, [and] incapable of applying discretion sensibly."[3] Rules based regulation is rigid and not adaptable to specific client circumstances, preferences and situations, and encourages a tick the box mentality.

NEMA feels that the divergence of the OSC and CSA away from principles based regulation of client suitability, to a rules based standard of investor limits, is a mistake and a threat to our portion of the capital markets, leading our industry and Canada's regulation in the wrong direction. Our economy depends on the health of Entrepreneurs and small business, as they are Canada's leading employer. There are over one million small businesses in Canada and they make up 98.2 percent of employer businesses.[4] Because Canada's economic future depends so heavily on small business, Brent W. Aitken, Vice-Chair of the BCSC encouraged innovation in the way Canada is regulated:

> Slavishly adopting US-style regulation will, over time, ensure that we are less competitive. We need to ensure that our system of regulation lets our market participants be more nimble in order to compete internationally. The US has chosen to regulate securities with a very heavy hand. As a result, compliance costs are high. Market participants nevertheless come from all over the world to list and trade in US markets because of the advantages associated with their enormous size and liquidity. The US therefore gets away with a high cost environment because its markets offer advantages that are perceived to outweigh the high costs. Canadian markets do not offer those kinds of advantages. We therefore cannot afford to import the high costs of US-style regulation. We need to think about our approach to regulation as an opportunity to provide a low-cost, high-credibility market that will not only help make our own market participants more competitive, but will attract foreign market participants to our markets. [5]

Given that the Exempt Market is the fastest growing sector of the Canadian capital markets, and has been noted as "crucial,"[6] it should be allowed to continue to grow and evolve. The Exempt Market has the potential to realize many economic goals for participants from issuers to investors if allowed to flourish and not smothered by regulation that our members do not have the economies of scale to absorb.

The costs of additional regulation are ultimately passed on to investors, so a thorough cost benefit analysis needs to be undertaken to account for resources being dedicated to these potential inefficiencies that are policy driven. Worse, extra regulation, especially in the rule based form of investor limits, can create unintended consequences that we fear would hollow out the talent and potential in this industry. This is why the role of the regulator, and regulation development and implementation is essential in the growth and success, or possible failure, of this industry.

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[2] Malcolm K. Sparrow. The Regulatory Craft: Controlling Risks, Solving Problems, and Managing Compliance (Kindle Locations 569-570). Kindle Edition.

[3] Malcolm K. Sparrow. The Regulatory Craft: Controlling Risks, Solving Problems, and Managing Compliance (Kindle Location 39). Kindle Edition.

[4] Key Small Business Statistics 2013 Stats Canada http://www.ic.gc.ca/eic/site/061.nsf/eng/02804.html

[5] Another Way Forward for Securities Reform" Brent W. Aitken, page 4 http://www.tfmsl.ca/Documents/BCSC.pdf

[6] ASC 2013 Annual Report Page 5 http://www.albertasecurities.com/Publications/2013-ASC-Annual-Report.PDF

3.2. Suitability versus Investor Limits

Regulators are proposing limits to increase investor protection in the Exempt Market, but it will have the opposite effect. No substantive analysis has been done or documented that the current suitability paradigm (enacted with NI 31-103) is not working.

> We have to make (regulation) understandable for market participants so they know how to comply, and we have to build it in a way that motivates market participants to make the right compliance decisions. **If the system encourages a tick-the-box mentality about compliance, it puts market integrity at risk**. **As market participants make thousands upon thousands of compliance decisions each day, there is no assurance that ticking all those boxes is actually protecting the interests of investors**. We think this is what a good system of regulation should do – encourage market participants to think about what is best for investors and markets in deciding how to comply, rather than looking to the regulator for instructions on what to do. And those managing the regulatory system should focus on holding market participants accountable for their decisions, not telling them how to run their businesses. Too often, we see accountability and effective regulation undermined by "nanny" regulators too eager to involve themselves in the business decisions of the regulated community. (Emphasis added).[7]

The CSA, in a recent publication stated that: "The know-your-client (KYC), know-your-product (KYP) and suitability obligations are among the most fundamental obligations owed by registrants to their clients and are cornerstones of our investor protection regime."[8] NEMA agrees. Our members have gone through great lengths and expense to assemble compliance process systems that focus on suitability principles (with a 10% concentration rule best practise). In the report noted above, the OSC noted significant deficiencies in suitability by registrants. We believe that this is because the NI 31-103 regulation regime has only been in existence for four years, and that Ontario does not yet have a retail Exempt Market, as Western Canada does. We believe education and guidance, and where needed, strict enforcement measures for non-compliant registrants are needed. Please refer to section 4.4 for elaboration on enforcement recommendations.

3.3. The Outdated Role of Investor Categorization

Now that there is a suitability regime in the Exempt Market, NEMA feels investor limits and investor categorization are redundant for registrants and that the current BC OM model, where they do not have the eligible investor category (or investor limits) is most sensible. For non registrants, like those using the North-West Exemption, investor categories and limits are not redundant and make more sense in terms of investor protection.

The suitability process is one of the most important aspects of investor protection. NEMA feels that this process is central, and that the eligible investor category, which predated NI 31-103, should be eliminated. It was an arbitrary limits-based rule that was meant as a proxy for suitability pre NI 31-103, and has outgrown its purpose since clients are now assessed individually when Exempt Market product is sold through a registrant.

The Eligible Investor criterion is based on the assumption, like the Accredited Investor exemption, that the wealthier someone is, the more sophisticated they are with investing. This assumption has

[7] Another Way Forward for Securities Reform" Brent W. Aitken, Vice-Chair of the BCSC pages 5 http://www.tfmsl.ca/Documents/BCSC.pdf

[8] CSA Staff Notice 31-336 *Guidance for Portfolio Managers, Exempt market Dealers and Other Registrants on the Know-Your -Client, Know-Your-Product and Suitability Obligations*. January 9, 2014. P 1

not been empirically proven and is a quasi-measure of investor sophistication. The only way to judge a client's financial sophistication and risk tolerance is to interview them, like Exempt Market registrants do before accepting a subscription through the KYC process.

Also, with assistance, clients make decisions about large financial purchases every day that they are not sophisticated enough to make. The majority of the Canadian population owns homes and cars, for example. Most of them have no idea what makes a home or car deemed in good shape and a good value for the requested price. People enlist mechanics and home inspectors to asset the shape of the potential purchase before buying it. Anyone who does not attain third party advice is considered foolish.

As a client would leverage the knowledge and experience of a home inspector or mechanic to assist in buying a home or car, one can leverage the knowledge and experience of a DR in the Exempt Market. A registrant can provide the expertise and education required so that a client can invest in suitable Issuers, even if they are deemed 'unsophisticated' by the measure of their investable assets.

3.4. Key Differences between the Exempt Market and Other Retail Financial Services

With the adoption of NI 31-103 and the technological advancements in financial services, there is a bridging of the gap between the differences in the traditional retail investment industry and the retail Exempt Market. As you can see from the chart below, there are many similarities to the Exempt Market and the two other retail channels of financial services; IIROC and MFDA. The difference between the Prospectus and offering memorandum will be covered in section 4.1.

Table 1: Comparison of main features of Retail Financial Services vs. the Exempt Market

CATEGORY	IIROC & MFDA	EXEMPT MARKET
Regulated By	Self-Regulated	Directly Regulated by Commission
Primary Disclosure Document	Prospectus	Offering Memorandum
Investor Categorization	No	Yes
Investor Limits	No	Yes [9]
Investor Protection	Suitability Regime	Suitability Regime
Secondary Market/Liquidity	Yes	Limited[10]
Register with Provincial Securities Commissions	Yes	Yes

The major differences are: regulation, structural differences of a secondary market and ongoing disclosure, and the way clients are treated. In terms of structural differences; there are no current disclosure requirements for Issuers in the Exempt Market. However, the OSC has proposed this and NEMA and our members generally support that change. There is also lack of a secondary market

[9] Limits for non-eligible investors, and proposed limits for eligible investors

[10] TSX Private Markets announced they will launch a secondary market for some Exempt Market Issuers this year. A number of existing Exempt Market offerings provide liquidity provisions already.

with Exempt Market investments, but there will be a limited secondary market in Canada this year with the TSX Private Markets platform launch. It may never bring the liquidity and volume of a public stock exchange, but it will provide a formalized secondary market.

The other differences are around investor categorization and investor limits. As mentioned in the previous section, since categorizations precede NI 31-103, we feel they are redundant as suitability far exceeds the limit based regulation of both the eligible investor category as well as investment limits *providing the Exempt Market product is distributed through a registrant*.

The last and final difference is how the Exempt Market and the other categories are regulated. Registrants selling Exempt Market products are regulated by the commissions directly, as opposed to self-regulatory organization. It would be logical to assume that direct oversight would be as good, or arguably better, than with a self-regulatory organization requiring only the same, if not less regulations.

Canadian regulatory publications ubiquitously quote motivations of 'investor protection' and a 'level playing field' as goals of securities regulators, and if regulators do in fact go forward with these inefficient proposals of investor limits, and continued use of investor categorizations, perhaps such limits should be considered for IIROC brokered Prospectus offerings and MFDA offerings as well.

3.5. Cost Benefit or Regulatory Impact Analysis

As part of your analysis of the proposed changes, we respectfully encourage you to read the hundreds of individually written letters you have received from industry and investors and be cognizant of what they are communicating. These of letters give a pragmatic account of what your proposed changes mean and the potential harm that could be done to the capital markets. They also represent countless hours and resources of the people who wrote them, which was diverted from other activities, including creating value for investors. In addition, the hundreds of letters from Exempt Market investors should indicate how investor limits are unwanted and perceived as an invasion of rights.

We encourage regulators to be respectful of the Exempt Market industry. The majority of participants in the Exempt Market today are not only credible and experienced professionals but are very knowledgeable in the operation and needs of private enterprise. Please be cognizant that every change and every proposal published potentially directs industry's resources to inefficient areas. The costs of each policy change can be in the hundreds of thousands of dollars; and our members are small businesses themselves and cannot absorb these costs as well as larger firms like banks. *The biggest risk in the Exempt Market currently is regulator risk.*

Without being backed by real research and information, policy formation can negatively affect industry, SMEs, and investor returns. Although we feel we are putting forth solid qualitative data, we are missing quantitative industry data to demonstrate whether or not the investor protection concerns pre NI 31-103 have been adequately dealt with. The CSA proposal cited "numerous complaints from investors that have invested significant amounts under the OM Exemption and incurred significant losses."[11] NEMA requested information regarding this vital comment through a formal Freedom of Information request to the Alberta Securities Commission on April 3, 2014 and received a denial on May 2, 2014[12]. NEMA has since appealed. The crux of policy making must be relying on substantive information.

[11] CSA request for comment March 20, 2014, Annex B, Page 2
[12] Please refer to appendix A

When asked to clarify their statement in Annex B of the notice regarding the complaints, the ASC would not provide relevant and substantive data as "the amount of time and resources required to extract this information from the ASC's extensive paper-based investigation records would unreasonably interfere with ASC's operations." We find it extremely alarming that the ASC feels it is "unreasonable" to have to provide data to justify proposed changes to public policy, particularly one that would fundamentally affect investor rights and the viability of an industry that raises capital for SMEs.

NEMA strongly recommends the CSA compiles the data in the request for information detailed in appendix A, especially regarding how many of the investor complaints were post versus pre NI 31-103. Based on the information we have compiled, NEMA feels this limit proposal is 'regulation for the past' and is deficient to NI 31-103 suitability rules already put in place in 2010.

4. Investor Protection

4.1. Current Assumptions

Canadian regulation in general has had a startling trend, and the 'unintended consequence' of investor protection efforts has created a dichotomy of investors: the 'haves' and 'have-nots.' The 'haves,' or Accredited Investors, have a plethora of options and are not restricted by what main stream trendy financial advice happens to be at any particular time. They have an army of expertise at their disposal, from portfolio managers, investment fund managers, hedge funds, and a wonderful assortment of niche financial products. Then, there is everyone else, the 'have-nots' that do not meet Accredited Investor criteria. For the 98.5%[13] of the population with net worths and income under the accredited investor thresholds, there is a decrease of investment choices. This is a shame. These people are restricted in choice, variety and selection and have to meet suitability parameters because they are not judged to be able to look after themselves.

The implementation of NI 31-103, and specifically the OM exemption, opened up access of private securities to the retail investor. This retail Exempt Market currently exists in every province but Ontario. We applaud Ontario for looking at the OM exemption, but feel placing limits on the amounts investors can invest goes against investor protection principles and amounts to investor restriction.

The base underlying assumption of these proposed rules are either:

(A) 98.5% of the general population (that are not accredited investors) are too stupid to be able to make good decisions when it comes to investing

(B) the products being offered are too terrible to allow 98.5% of the general population to invest without significant restrictions, or

(C) both.

Rather than taking away investors rights, regulators should focus their efforts on properly educating investors about this sector that is growing in popularity with investors and issuers. The ASC considers this a priority, stating, "The ASC operates on the belief that a strong defense for investors is their

[13] OSC Exempt Market Review Staff Consultation Paper 45-710 Appendix D http://www.osc.gov.on.ca/documents/en/Securities-Category4/sn_20121214_45-710_exempt-market-review.pdf

practical education on investment risk."[14] NEMA would be happy to assist with education efforts and has already made strides in this direction.[15]

4.2. The Quality of Prospectus Offerings versus an Offering Memorandum

Another base assumption that we would like to challenge is that the Prospectus provides greater investor protection to clients than an OM does. We have found no empirical evidence that this is the case. The structural differences that differentiate OM Exempt Market issuances as 'high risk' are closing with regulation and technology.

The proposal to take away an investor's rights in an aim to protect them from investing too much money via an exemption from Prospectus requirements is flawed not only in principal but in fact. While regulators are unable to provide statistics on the overall success and failure of the 'high risk illiquid securities' sold via the OM exemption, particularly since implementation of NI 31-103, statistics regarding the securities sold via Prospectuses and all the 'protections' afforded by them are publicly available.

People use the term 'investor protection' almost synonymously with 'protection against investor losses.' However, the Prospectus does not protect against loss, as indicated by research on the performance of new listings on the TSX Venture exchange.[16] Of the 293 companies that were newly listed on the TSX-V between 2011 and 2013, which would generally have been offered via a Prospectus:

- 58% (170 companies) now trade at a price lower than they were listed at
- 39% (115 companies) now trade at less than half the price than they were listed at
- 8% (24 companies) are now valued at less than 10% of the price than they were listed at
- 14% (41 companies) have had their trading halted or suspended

We have to question why regulators, who aside from protecting investors are fostered with promoting an efficient capital markets are so focused on the risks associated with the OM exemption when the holy grail of securities law, the Prospectus, is failing to provide the perceived stanch investor protections on which it is founded.

Table 2: Summary of Structural Differences in a Prospectus versus Offering Memorandum

FEATURES	*PROSPECTUS*	*OFFERING MEMORANDUM*
Investor Right to Sue for Material Misrepresentation	Yes	Yes
Files with the Regulator	Pre Distribution	Post Distribution
Reviewed by the Regulator	Yes	No [17]
Guarantees Investors will not lose all of their Money	No	No

[14] ASC 2013 Annual Report page 18
[15] The NEMA Education committee created a website to explain our industry in simple language http://www.exempteducation.ca/
[16] Prices as of May 14, 2014
[17] Regulators randomly select OMs for review, and they also will review if a member of the public files a complaint.

As can be determined from the chart above the divide between what a Prospectus and an OM offers is closing. The categorization of issuer products being 'high risk' solely because of the fact they are distributed via an OM is becoming harder to rationalize.

An assortment of Exempt Market products will soon be liquid due to the initiatives of the TSX Private Markets and other technology driven portals. Investment offerings sold via the OM exemption will probably not be filed on SEDAR, but if current proposals of continuous disclosure are adopted, non-reporting issuers will be turned into quasi-reporting issuers and investors will have current, valid information just like with a Prospectus offering. The only major difference that would be left is that the regulator reviews a Prospectus before a raise, and with an OM does it afterwards.

The OM is the main disclosure tool for investor protection in the Exempt Market, much like a Prospectus is in the public markets. The purpose of a Prospectus is to protect the investor by giving them all the pertinent information to make an informed investment decision and an OM serves the same purpose. As seen in the chart below, a well drafted Prospectus covers all the same areas of the issuer that a Prospectus covers.

Table 3: Summary of Disclosure Requirements in a Prospectus versus Offering Memorandum

INFORMATION INCLUDED	*PROSPECTUS*	*OFFERING MEMORANDUM*
The History of the Issuer and a Description of Operations	Yes	Yes
A Description of the Issuer's Business and Investment Plans	Yes	Yes
A Description of the Intended of the money Raised from Selling Securities	Yes	Yes
Information about the Issuer's Management and its Principle Shareholders	Yes	Yes
A Summary of major Risk Factors Affecting the Issuer	Yes	Yes
A Description of the Legal Rights of Investors if the Document Contains a Misrepresentation	Yes	Yes
A Listing of the Assets the Issuer Holds	Yes	Yes
A Listing of the Debt the Issuer Holds	Yes	Yes
A Listing of Other Securities that have Already Been Issued	Yes	Yes
Audited Financial Statements	Yes	Yes

4.3. Issuer Due Diligence

Other than the suitability regime, the most important area to focus on improving investor protection is due diligence and corporate governance of issuers. NEMA feels due diligence is one of the cornerstones of investor protection.

Due diligence is crucial because it is the gateway to whether or not an offering gets approved and placed on an EMDs shelf for distribution. It happens before the capital is raised at the EMD level. Due diligence then has a second and third stage. The second stage is once the product is placed on the EMD shelf where DRs practice due diligence for the Know your product (KYP) requirements. The third step is on-going due diligence for EMDs to monitor the raise and verify if the issuer is hitting their milestones as promised.

In her letter, Yvonne Martin Morrison, NEMA's Advisor Committee Co-Chair, summarizes the EMD review process very articulately:

> Initially, among the leadership of the dealership an investment approval committee conducts an initial review:
>
> • may quickly dispose of products that may be too risky too costly or with too little potential interest
>
> • conduct initial scrutiny of the issuer of the security, reputation, record of compliance, etc
>
> • minimum level of interest is required, and it must fit with other considerations
>
> • this initial review either declines to proceed with further review or moves to a detailed review
>
> Once in a more detailed review process, the investment committee considers the following, especially as it pertains to an offering relying on the offering memorandum exemption:
>
> 1. What investment need is met?
>
> 2. Could there be less complex or less risky alternatives?
>
> 3. Review competitive analysis\forecasts and assumptions. Are they reasonable?
>
> 4. What factors influence investment outcome? Examine a range of market conditions and outcome anticipated.
>
> 5. Is there a transparent structure? Are there features that make it difficult to analyze or verify? Who can provide the expertise to analyze assumptions and risks?
>
> 6. What are the redemption features? level of confidence in these?
>
> 7. Risks? how disclosed? adequate?"
>
> 8. What are costs and fees? in line with competing products?
>
> 9. Identify additional secondary risks and concerns

10. Is the split of returns reasonable and fair? particularly from investor's standpoint?

11. What are potential conflicts of interests? can they be managed?

12. Identify regulatory concerns

13. What is the reputation and background of the issuer and connected parties? past offerings?

14. Detailed review of financial statements

15. For whom is the product intended? who should not invest in the product?

16. Review complexity and if it is more complex, will this impact suitability considerations and sales training?

17. How much training will be required and how will it be delivered?

18. Offering Memorandum must be gone through in great detail.

19. All of this must be documented thoroughly and follow established procedures of the dealer.[18]

EMDs get numerous solicitations from potential issuers to help them raise capital. EMDs select only a small fraction of these issuers to place on their shelves. There are many common best practices in our industry at this time, and due diligence processes are the gatekeeping step of private capital raising. NEMA is helping to formalize and build out these best practiced with our Due Diligence Committee, and would be pleased to have regulator feedback on this effort.

4.4. Reinvestment and Tracking Issues

A logistical concern about the current CSA proposal is tracking annual investor contributions and complying with investor limits. This adds another operational burden on EMDs for investor behavior that is completely out of their control (as there is more than one EMD an investor could approach).

This proposal fails to take into consideration successful investor exits in the Exempt Market and that due to the combination of illiquidity and investment maturity dates, many investors invest in the Exempt Market intermittently and not on an annual basis. Will investors be able to carry forward their investment limits if they do not invest in a given year (like an RSP) or will they forfeit that amount? What about an investor who receives a payout from a past Exempt Market investment that is in excess of $30,000? Are they restricted to re-investing $30,000 or can they invest the entire amount that was returned to them? If they receive a return from a past investment in June but already invested a new $30,000 in March, are they going to be forced to invest their returned capital elsewhere or wait until the new year? This creates too much emphasis on timing and an inevitable “wallet race” by issuers early on each calendar year.

The Canada Revenue Agency, who has far greater resources than provincial securities regulators, has maximum limit requirements for contributions to RRSPs, Tax Free Savings Accounts, etc. yet over contributions are still a regular occurrence even though there are vast amounts of oversight and

[18] Response letter to the OSC/CSA March 20 Publication dated May 28, 2014 from Yvonne Martin Morrison p. 3-4

regulation in place. Do securities regulators really think they will successfully be able to track these limits? If so, a plan should be presented.

Regardless, if implemented the resulting interactions with investors will be difficult to navigate for registrants, and would divert conversations from suitability and portfolio management to arbitrary dates and amounts.

We would suggest regulators resources would be better utilized ensuring the principals of suitability are being followed than trying to data mine arbitrary limits in search of the proverbial 'needle in the haystack' for whom no one will likely be accountable.

4.5. Enforcement

Unenforced rules have no purpose except to burden legitimate market participants. The commissions need to focus more resources on the enforcement of existing securities laws as opposed to writing new policies at such a pace that even legal compliance professionals cannot keep up. There has been no cost-benefit or regulatory impact analysis on these proposals, and no time to prove or disprove if NI 31-103 is working as intended. Proposing new and contradictory changes with investor limits at this time gives the perception regulators have no confidence in or respect for the work of past policy makers. Our industry did a complete transformation in terms of structure, compliance, due diligence and suitability and the economic costs of the change brought in by NI 31-103 have been substantial.

When NEMA inquired about the motivations of investor limits and why suitability was not considered adequate, it was communicated that the regulators did not believe industry would follow the rules. In a separate conversation, we were told that regulators do not have enough resources for enforcement.[19] However, the ASC 2013 annual report suggests otherwise. "The ASC has both the expertise and resources necessary to investigate possible breaches of the act as well as the authority to move quickly and decisively against any threat to investors and the integrity of the market."[20]

Research has shown that enforcement is an essential component to market integrity and investor confidence. Even with sound securities laws, without the consequences of enforcement they are meaningless. "No matter how good the rules are for regulating the conduct of market participants, if the system of enforcement is ineffective – The confidence of investors is undermined…and Canadian securities are devalued."[21] It has also been cited in a report done by the Task Force to Modernize Securities legislation in Canada that Canadian securities are not underfunded when compared to the US, that "A lack of co-ordination, unnecessary duplication…" create the perception of lack of resources.[22]

This means that unscrupulous people can operate without fear of real consequences. As the majority of Exempt Market stakeholders (which NEMA represents) are legitimate business people, it is the motivation of the vast majority of the industry to see these predatory individuals sanctioned and deterred from re-entering the industry. While we applaud recent efforts, albeit much delayed, to penalize principals who have done harm to investors, we feel more needs to be done on this front.

NEMA first recommends preventative measures, like creating a whistle blower system, to help catch frauds and unlawful activities sooner. NEMA also recommends stiffer punitive measures for individuals not abiding by securities laws. More integrated partnership with law enforcement, and

[19] Personal conversations with regulation and compliance professions who wish to remain anonymous.
[20] Alberta Securities Commission Annual Report 2013 page 8.
[21] Critical Issues in Enforcement The Hon. Peter de C. Cory, C.C., Marylyn L. Milkington. 2006 http://www.tfmsl.ca/docs/V6(4)%20CoryPilkington.pdf
[22] "Canada Steps Up" by Thomas I.A. Allen October 10, 2006. P 3 http://www.tfmsl.ca/documents/TaskForceSpeech(TomAllen)_en.pdf

other jurisdictions, as well as stiffer penalties and professional consequences for those that have the intention to defraud investors through the Exempt Market. It has been well ascertained that fraud cannot be prevented, if someone wants to steal, they will find a way, and no amount of rules will stop them. These individuals need to be deterred from (all areas of) Canada's capital markets by stiffer penalties for crimes. **These issues are much more important than paperwork improperly filled out, investment contribution size, or signage placement and get to the crux of investor protection. The enforcement needs to be focused on people operating under the North West Exemption, or blatantly disregarding all securities regulation,[23] not the EMDs who actively got registered and are following the rules.**

5. OSC Commentary for Proposed Amendments to NI 45-106

5.1. General Comments

NEMA's comments focus on specific questions relating to OM exemption. However, we would like to briefly mention that we are in support of the FFBA Exemption and the Crowdfunding Exemption. We support the FFBA as it is proposed and feel this will assist SMEs in gaining access to capital. As for crowdfunding, we defer the specific comments to the National Crowdfunding Association,[24] as they have done more research on how specifically crowdfunding should be adopted in Ontario.

5.2. OM Exemption Questions

General Questions

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

The OM exemption is a great tool for SME's and is being more utilized by them in our industry, although we only have anecdotal evidence of this trend so far. (However, by definition, all exempt market Issuers would qualify as an SME).

The adoption of the OM exemption in Ontario would be most encouraging for start-ups businesses to use if it implemented without investor limits. Our members have told us that SMEs are already-considering pulling back from using the OM exemption (in jurisdictions other than Ontario) at this time in anticipation of the investor limit rules, due to the prospective higher administration costs per investor.

NEMA has a few recommendations to help in government's efforts for job creation and economic invigoration, after the OM exemption is adopted in Ontario. Education and outreach for entrepreneurs and entrepreneurship groups about this and other capital raising exemptions would benefit both Entrepreneurs and industry, because it would assist in placing SMEs with the proper capital raising exemption at the proper life cycle. Entrepreneurs need to be given clarification on the business trigger test, as there is still significant confusion around whether they need to become registered or not. *The*

[23] Prime example on the Garth Turner Blog *The Sure Thing* 2014 http://www.greaterfool.ca/page/17/
[24] Their information can be found here: http://ncfacanada.org/

Trigger Test: How to determine if you need an EMD to raise money in the Exempt Market discusses this issue further.[25]

Second, remove the opening audit (zero balance audit) requirement for Issuers. This will save them superfluous expenses that do not benefit the potential investor or investor protection in general. *The Audit Dilemma* [26] gives an articulate account to why this first audit generally has no value for investors.

NEMA has made efforts in education about the Exempt Market.[27] NEMA would be happy to assist in these education efforts, and can build materials for entrepreneurs, hold events and have subject experts attend and speak at entrepreneurship events. After the proposed exemptions are passed, NEMA feels that education and outreach would bridge the financing gap entrepreneurs are feeling today, particularly if adopted without investment limits.

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. Should we impose a cap or limit on the amount that a non-reporting issuer can raise under the exemption? 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?

Financing needs flexibility. NEMA recommends not having financial caps on the OM exemption, or for the period of the raise.

If the annual disclosure requirements portion of your proposal are adopted, non-reporting Issuers will in essence become quasi-reporting Issuers which should alleviate a number of concerns.

Decreasing flexibility by imposing caps and timelines could increase *funding risk* and create investor protection concerns.

3) What type of issuer is most likely to use the OM Prospectus Exemption to raise capital? 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?

Issuers from a multitude of sectors including real estate, technology, oil & gas, consumer finance, mining, etc. utilize the OM exemption.

A typical Issuer will need to require a large enough raise to absorb the costs of creating an OM and finding and attending to a proper distribution channel, being $1,000,000 at the low end, typically in the $5,000,000 to $15,000,000 range.

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?

[25] The Trigger Test: How to Determine if you need an EMD to Raise money in the Exempt Market by Neil Hutton & Ryan Franzen Issue 8 The Exempt Edge Magazine http://www.exemptedge.com/the-trigger-test/
[26] The Audit Dilemma by James Dahl Exempt Edge Magazine Issue 3 http://www.exemptedge.com/the-audit-delemma/
[27] NEMA's education committee created this website for investors: http://www.exempteducation.ca/

Issuers should be meticulous in disclosing their specific risks to investors, especially sector specific risks. As market and investment models evolve rapidly, we feel apprehensive about having tailored disclosure requirements per Issuer type spelt out in regulation. This tailoring of disclosure requirements should be fostered by best practises and under the direction of desired disclosure communications from regulators based on your experience.

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?

While we understand the motivation to keep specific securities from using the OM exemption, we feel it constricts the flexibility needed for capital raising and reduces investor options when investing. Excluding 'complicated' investments like derivatives could reduce the ability of an Issuer to properly hedge their position creating unneeded risk, like currency risk, for example.

If it makes sense for an issuer to utilize certain types of securities which may make the offering more complex, yet at the same time make it a better or more sound investment, then they should have the same opportunity that a Prospectus has. What is critical in this scenario is that the necessary disclosures and clear understanding of the instrument are made available to investors.

Your report also refers to Investment Funds being excluded which we also disagree with. Investment Funds are held to a higher level of regulatory scrutiny and disclosure so we do not understand the logic in excluding them from relying on the OM Exemption. We have a member that is an Investment Fund and their primary purpose is to provide loans to small businesses, directly meeting your goal of providing funding for SMEs. Mortgage Investment Corporations also fill an important funding gap that indirectly support SMEs.

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?

Please refer to answer 5. We feel that Issuers should have the flexibility to build an investment that makes sense using securities types that best fit the business plan and goals of the Issuer. Use of derivatives may make the offering more complex, but it can also make sense and make the investment more sound as well.

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? How long does an OM distribution need to stay open? Is there a risk that "stale-dated" disclosure will be provided to investors?

We support having no limits on the length of time an offering can remain open to create flexibility for the Issuer, as long as estimated timelines are clearly communicated and properly disclosed. This is the way the OM exemption exists in other jurisdictions and there are no indications of issues with this.

Existing regulations requiring OM updates within 10 days of a 'material change' or 120 days following a financial year end are adequate to address the risk of stale dated disclosure being provided to investors.

We believe that the time frame of an Issuer raising capital through the OM exemption should be determined by their business model, their need for capital from a timing perspective, and clear communication of these items through proper disclosure and transparency.

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?

While we see logic in disallowing related party registrants and Issuers to utilize the OM exemption, you can never realistically eliminate conflict of interest from any securities transaction. Conflicts of interest need to be properly disclosed and communicated with the investor when assessing suitability. Then it should be the investor's choice where they place their money. From our experience, some investors like going directly to the Issuer, or prefer to invest with a certain entity for their Exempt Market holdings. The sheer amount of letters you received from MIC investors is evidence of this.

In addition, we feel it creates an uneven playing field, as related party transactions are the norm in firms registered in other categories.

With proper disclosure and use of a best practises investor concentration rule, there is no reason why related party Issuers should not be able to raise capital under the OM Exemption. Due to the early stage of this industry, good Issuers could potentially be bottle necked attempting to raise capital through third party EMDs and many worthwhile ventures could go unfunded.

9) Concerns have been raised about the role of unregistered finders in identifying investors of securities. 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? What role do finders play in the Exempt Market? What purposes do these commissions or fees serve and what are the risks associated with permitting them? If we restrict these commissions or fees, what impact would that have on capital raising? Investor qualifications – definition of eligible investor.

In financial services, it is difficult to be a generalist and satisfy every need your client has. Even dual related roles like selling investments and financial planning can be challenging if you want to serve your client base well. This is why referral arrangements are so popular and prevalent in the industry.

NEMA does not support restricting unregistered finders where the finders are restricted to providing an introduction to a Registered Representative, meaning they provide a client introduction to the Dealing Representative and the registrant provides the suitability assessment and recommendations. We feel this should entail restrictions where unregistered finders DO NOT attend client meetings in assessing suitability, are clearly transparent in their introduction of the client whereby the client knows a referral fee is being garnered, and the client clearly understands that their relationship as to the suitability of an investment to their portfolio is with the Dealing Representative and the Dealership, NOT the unregistered finder.

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

As you can refer to section 3 of this letter, we recommend the category of eligible investor should be abolished. Client investments should be determined individually, through the suitability process, just like in the IIROC and MFDA channels.

If the OSC does go ahead with investor categorization, here are our recommendations:

The less confusing the definition of categories of investors, the more compliance you will have to the rules. Given that the test is on net assets and therefore only an individual's equity in their residence is able to be included in this calculation, and it is included in all other Canadian jurisdictions, we see no reason why it should be excluded.

Whether an investor's assets are comprised of stocks, bonds, private equity, mutual funds, art, gold, real estate, etc. should not affect their categorization as an investor. Also, categorizing some assets as worthy of inclusion and others not would confuse the investor and lead to conversations that would be awkward for both them and the DR created by the 'hierarchy' of assets.

If the OSC is really intent on changing the Eligible Investor definition we suggest having a definition more aligned with the accredited version; a threshold of 'financial assets' of an amount of $100,000, for example.

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). Is this an appropriate basis for an investor to qualify as an eligible investor? Should the category of registrants qualified to act as an eligibility advisor be expanded to include EMDs?

Yes, that would be an appropriate basis to qualify an investor as an eligible investor. We strongly suggest this be expanded to EMDs, as they specialize in private securities and the exempt market, it would make sense to include them along with registered investment dealers.

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?

Absolutely not, as we have given reasons in the section 3 of this submission. We feel it is an imposition of investor rights and freedoms and creates a flagrant disregard for the suitability paradigm put in place by NI 31-103.

If, despite the substantial opposition received, regulators do go forward with implementing such caps, we believe that there will be a high prevalence of tax planning, corporate structuring and restructuring by investors so that they can participate as they desire in the Exempt Market.

We believe that the imposition of such a cap will in fact cause investors to find more risky means to circumvent such a regulatory barrier, much like the OSC has historically experienced with people falsifying their status as *Accredited Investors* due to the historically limited Prospectus Exemptions available.[28]

While we are confident that our Issuer, EMD, and DR members will continue to do their best to ensure rules and regulations are followed, we are very concerned that investors, who are not fearful of regulators, will merely move to multiple EMDs and not fully disclose their previous purchases, in order to invest as they wish, thus putting themselves at greater risk in the marketplace and having the opposite effect that these proposals intend to have.

As discussed earlier in this submission, we strongly believe in investor protection and have given some suggestions on how to achieve it. In our information gathering for this submission, we have heard the justification for the limits that 'suitability is great, but we do not think the Exempt Market is doing it.' We can assure you that suitability is a prominent topic with our industry and that industry, in general, has adopted it. If there are specific EMDs that are not following the rules we suggest you focus efforts on education and industry outreach, which we are happy to assist with. If certain EMDs are still not following the spirit of suitability guidelines, we suggest concentrating more resources to enforcement. Putting all your available resources into policy development is a waste and of no consequence if there is no enforcement.

Point of Sale Disclosure

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

Blind pool offerings are important structures for Issuers that have a certain segment or market niche category they want to invest in, but do not have the specific assets lined up. Blind pools offer flexibility in timing that help the Issuer attain 'fire sale' prices beneficial for investor returns. The business plan and mandate should clearly articulate the attributes as well as the requirements for assets to qualify for the blind pool. Subject assets being acquired into a blind pool should be disclosed as acquired, with specific disclosure to both invested and future prospective investors, indicating the attributes of the acquired asset and disclosing how it meets the investment mandate. Regarding the specific disclosure, please refer to our answer to question four.

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?

If the base assumption is that a Prospectus is a superior document, we do not understand why OMs becoming more like Prospectuses is a negative thing.

That being said, putting out guidance in the form of best practises publications, and having industry outreach to the major Ontario legal firms would be advisable. NEMA could assist you in these efforts.

[28] OSC Staff Notice 33-735 Sale of Exempt Securities to Non-Accredited Investors
http://www.osc.gov.on.ca/documents/en/Securities-Category3/rule_20110513_33-735_non-accredited-investors.pdf

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?

Our membership was mixed on this issue. For Dealerships, the current best practice is having the compliance department review all marketing materials put forward by an Issuer to ensure consistency with the Offering Memorandum. EMDs find this extremely onerous, and are continually concerned that liability for misstatements may be directed back at the dealership, rather than the Issuer who created such documents. EMDs are strongly in support of incorporating the marketing materials by reference into the Offering Memorandum. Issuers feel there could be increased cost and timelines with incorporating the marketing materials in the OM, and have concerns that it could reduce flexibility if marketing materials need to be changed or adapted.

Ongoing Information Available to Investors

16) 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? 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? If the aggregate amount raised is $500,000 or less, is a review of financial statements adequate?

NEMA believes that this should be a regulated requirement for Issuers relying on the OM Exemption. Our member EMDs have strived to have this as a best practice already.

Our member EMD's experience has been that Issuers are willing to provide updated disclosure during the capital raising stage of the project, but after the capital is raised the Dealership has no leverage to ensure that an Issuer provides ongoing financial updates or material changes to the Dealership or their investors.

This is an ongoing concern for our member EMDs, as their fundamental belief is that Dealing Representatives are relationship based with their clients and not merely transactional sales people. As a result, EMDs spend significant time, energy, and expense, following, pursuing, and monitoring Issuers they have raised capital for historically, to provide insight and updates to their investor clients.

As our members typically raise amounts in excess of $500,000, NEMA has no comment on the disclosure reporting of Issuers this size.

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?

We agree with this, as long as it is done in a cost effective manner. We recommend an 'access equals delivery' system of all updates you discussed in the proposal. This is both fiscally and environmentally responsible. We recommend communication from the Issuer to the investors should be encouraged to be in e-form.

Investors that rely on the Offering Memorandum to make an investment decision need to have assurance that the Issuer will not deviate from the stated business plan. Events as you have listed may materially change the risk, time horizon, or nature of the investment, and investors should receive timely notice of such events so they can react accordingly.

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

Mandatory Annual General Meetings for the Issuer, regardless of the form of security offered would be prudent allowing for open dialogue between investors and Issuers.

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. Do you agree that a non-reporting issuer should continue to provide ongoing disclosure until either of these events occurs? Are there other events that would warrant expiration of the disclosure requirements?

We agree, and recommend as in question 17, an 'access equals delivery' system of all updates you discussed in the proposal.

We also believe that Non-Reporting Issuers should be mandated to provide informational access to all their investors and any Dealerships who have raised capital on their behalf until such time as they are Reporting Issuers, cease to carry on business, or fully exit investors of their investment.

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?

This could be warranted if the commission has a specific research intent with the information, (that could better the industry), otherwise without understanding specific reasons why this is contemplated, we feel this is overreaching by the Commissions and feel the extra reporting is unwarranted. In the interests of investor protection, the less paperwork with more plain and important disclosure is key to a successful transition and relationship.

6. CSA Commentary for Proposed Amendments to NI-45-106

1. Should non-individual investors, such as companies, be subject to the $10,000 limit if they do not qualify as an eligible investor?

No they should not, all investment contributions should be determined by suitably and investor preference.

Failing which, from a practicality standpoint non-individual investors, such as corporations and limited partnerships, may not qualify only because of tax planning strategies.

2. Are there circumstances where it would be suitable for an 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?

We strongly believe that neither caps nor investment limits should exist when a registrant, particularly a Dealing Representative supervised by an EMD is involved in a trade. We absolutely

believe that there are numerous circumstances where it is both suitable and appropriate for an individual eligible investor to invest more than $30,000 per year.

We have elaborated more on investor limits in the Section 3 of this submission. This is the one piece of the proposal that is the most divergent with the progress we have made in our industry. We feel it is an imposition of investor rights and freedoms and creates a flagrant disregard for the suitability paradigm put in place by NI 31-103. We hope that the commissions consider the letters received by investors about how these restrictions are undesired and needed, even if they fly under the guise of 'investor protection.' It is not investor protection, it is investor restriction.

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?

If, despite the substantial opposition received, regulators do go forward with implementing such caps and adopting the eligible investor category, we believe that there will be a high prevalence of tax planning, corporate structuring and restructuring by investors so that they can participate as they desire in the Exempt Market, as they've historically had the right to do.

We believe that the imposition of such a cap will in fact cause investors to find more risky means to circumvent such a regulatory barrier, much like the Ontario Securities Commission has historically experienced with people falsifying their status as *Accredited Investors* due to the historically limited Prospectus Exemptions available in that province.[29]

Irrespective of this, as relayed in question 2 and throughout this letter, caps and the eligible investor category should not be imposed at all provided a registrant is involved in a trade.

4. In what circumstances do investors actually seek and receive advice from a registered investment dealer? Does this introduce any complications or difficulties?

It is our understanding that DRs cannot give advice, but only determine suitability. 'Advice' would only be given through an IFM or PM through IIROC, which we understand rarely occurs as clients looking to invest with an EMD are typically moving away from those types of service providers.

As experts on Exempt Market Securities, we submit that EMDs are better equipped to act in this capacity.

5. Eligible Investor Criteria

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

As indicated, investor categories such as 'Eligible' should be repealed if trades are conducted through a registrant.

However, if retained, then yes, it should only apply to individuals as companies can strategically manipulate their incomes to achieve business goals.

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?

As stated above, investor categories such as "Eligible" should be repealed if trades are conducted through a registrant.

[29] OSC Staff Notice 33-735 Sale of Exempt Securities to Non-Accredited Investors http://www.osc.gov.on.ca/documents/en/Securities-Category3/rule_20110513_33-735_non-accredited-investors.pdf

If retained: given that the test is on net assets and therefore only an individual's equity in their residence is able to be included in this calculation, we see no reason why it should be excluded.

Whether an investor's assets are comprised of stocks, bonds, private equity, mutual funds, art, gold, real estate, etc. should not affect their categorization as an investor. Also, categorizing some assets as worthy of inclusion and others not would confuse the investor and lead to conversations that would be awkward for both them and the DR.

c) Should pensions be included in the net asset test under the OM Exemption?

Yes, if these categories are retained pensions should be included in the test.

Corporate pensions and RSPs are merely different means of achieving the same end: saving for retirement. To disallow pensions from the net asset test limits an investors' choices based solely on their employer.

6. Should lawyers and public accountants continue to be considered "eligibility advisers" in Saskatchewan for purposes of the OM Exemption?

NEMA will defer this answer to Saskatchewan stakeholders but as relayed above feel that EMDs are better equipped to act in this capacity, than traditional lawyers and accountants.

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

To ensure ongoing transparency for their clients, a number of third party EMDs have mandated that the Issuers for whom they are raising capital provide annual financial statements and some level of ongoing information circular even once they have ceased raising capital.

However, despite this growing trend, it is still the exception and not the norm. After the capital is raised, these third party EMDs presently have little to no leverage to ensure that an Issuer will provide ongoing financial statements to them or investors unless the principals of the Issuer intend to come back to them in the future for fundraising on a different venture.

In regards to Issuers sold by related party EMDs, it is our understanding that annual financial statements are provided less frequently, but our member related party Issuers were not opposed to making financial statements available to security holders.

Ultimately, the historic lack of ongoing annual financial statements is a function of: either not being required under varying business corporation acts (or similar statute), or there ultimately being no penalty for not providing these statements, even if an auditor has not been dispensed with when required.

a) How is this done? Are they delivered?

If relayed, this information is typically sent electronically or posted online to save costs with hard copies made available for those who may require them.

b) Are those financial statements typically audited?

As NI 31-103 was implemented not even four years ago and most EMDs spent their first year building compliance systems it is difficult to ascertain what is 'typical,' as more time is required for identifying trends.

To date, the statements provided are not typically audited. In certain cases however, as previously indicated, third party EMDs have mandated audited financial statements be provided by Issuers for whom they have raised capital.

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

We defer this question to specific Issuers, however our understanding that the statements are most often prepared on a Review Engagement basis.

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 ASPE?

We defer this question to specific Issuers.

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

We defer this question to specific Issuers and EMDs, however our understanding is that they are generally not requested until such time as an Issuer may appear to be having financial difficulties, evidenced by missing an interest and/or dividend payment to their security holders.

We submit that implementing this regime would primarily be to achieve the aimed goal of promoting accountability for Issuers in regards to use of proceeds and are fully supportive of its implementation, however we would suggest that prior to doing so it would be prudent to form a working committee with industry to establish the most pragmatic solution for all parties involved.

We would also suggest that, where appropriate, the implementation of a third party custodian, much like is seen in the mutual fund industry would achieve the same accountability, perhaps with lesser costs.

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

Given the vast range of capitalization and complexity of the underlying operations of the wide range of issuers that utilize the Exempt Market, this is all but impossible to estimate.

Issuers that utilize the OM exemption raise from as little as $1,000,000 up to $50,000,000 and have operations that range from those who undertake a few transactions a year to large operating companies. The costs of auditing entities of such varying sizes and operations will of course vary widely due to these factors and the size and reputation of the selected auditors.

We would suggest that the costs would be comparable to those incurred by the varying Issuers listed on the TSX Venture Exchange.

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

We would anticipate that the annual financial statements would generally be placed on a website with security holders being given the option to receive physical copies by mail should they so require.

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

See our answer to (7f) above. The only additional costs outside of preparation are printing and mailing which will vary with the number of security holders. Ultimately these costs will be fairly immaterial when compared to the cost of the audit itself.

8. Under the proposed amendments, issuers relying on the OM Exemption will 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 financial statements from the issuers? If so, please describe them.

As communicated in the OSC question 16, NEMA supports Issuers providing audited annual financial statements until such time as investor funds have exited.

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

While physical communication pieces are distributed at times, communication is typically made via periodic emails and website updates, sometimes utilizing EMDs and DRs to disseminate information on the Issuer's behalf.

There is no consistent methodology employed at present by the Issuers currently relying on the OM exemption. Based on the size and sophistication of the Issuer, there is a combination of approaches including physical mail, email distributions, and posting updates to an Issuer website.

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 he proceeds of a distribution under the OM exemption will have been fully spent?

No. Given that the financial position of an Issuer can change drastically, for better or worse, after the proceeds of a distribution have been fully spent, Issuers should be mandated to continue providing annual financial statements and disclosures to investors until investors are redeemed or the Issuer itself is wound up.

11. Should non-individual investors be required to sign a risk acknowledgement form?

We are fully supportive of the proposed addition of a risk acknowledgement form for all investments and investors: regardless of whom the purchaser is and if distributed via Prospectus or Prospectus Exemption.

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.

See our answer to question 11 above.

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

Yes.

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

No.

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?

As communicated in section 5, OSC question 8, while we see logic in disallowing related party registrants and Issuers to utilize the OM exemption, you can never realistically eliminate conflict of interest from any securities transaction. Conflicts of interest need to be properly disclosed and communicated with the investor when assessing suitability. Then it should be the investor's choice where they place their money. From our experience, some investors like going directly to the Issuer, or prefer to invest with a certain entity for their Exempt Market holdings. The sheer amount of letters you received from MIC investors is evidence of this.

In addition, we feel it creates an uneven playing field, as related party transactions are allowed in firms registered in other categories.

With proper disclosure and use of a best practices investor concentration rule, there is no reason why related party Issuers should not be able to raise capital under the OM exemption. Due to the early stage of this industry, good Issuers could potentially be bottle necked attempting to raise capital through third party EMDs and many worthwhile ventures could go unfunded.

16. Currently, most CSA jurisdictions that have an OM Exemption have adopted local blanket orders that permit an issuer to raise up to $500,000 under the OM Exemption without having to include audited financial statements in the OM. Further, the blanket orders permit the financial statements to be prepared in accordance with ASPE rather than IFRS.

(a) Should these blanket orders be continued or revoked? Please provide the basis for your answer.

No comment.

(b) If you believe the blanket orders should be continued, should the same threshold amount be used in determining which Issuers are subject to an ongoing annual financial statement requirement or an audit requirement? Please provide the basis for your answer.

No comment.

17. Should New Brunswick restrict the amount an investor can invest under the OM Exemption? Does this restrict capital raising opportunities in New Brunswick? Does this enhance investor protection?

As noted earlier in this submission, we feel the suitability paradigm for registrants eliminates the need for investor limits. A 'best practice' concentration limit of 10% to 15% could be suggested for investors.

18. Should New Brunswick prohibit the use of the OM Exemption by investment funds? Please explain your reasoning.

NEMA feels that investment funds should be allowed to raise capital under the OM exemption in all jurisdictions including New Brunswick and Ontario. As these investments are held to a higher standard of regulation their prohibition is non-sensible. We have witnessed numerous Issuers categorized investment funds using capital raised via the OM exemption productively for the betterment of the economy and SMEs and not simply for the purchasing of securities. Excluding them from utilizing the OM exemption would be a disservice to both the economy and investors. We refer you to the submission from Invico Capital Corporation in this regard.

7. Concluding Remarks

While on the surface the simultaneous release of OM related proposals by both the OSC and CSA appear to be a move towards harmonization and collaboration by regulators, they are in fact indicative of two organizations with very different mindsets.

On the one hand, through thorough industry consultation and outreach, the OSC has clearly gained an understanding of the post 31-103 retail Exempt Market. As such, they are closing in on releasing multiple Prospectus Exemptions in their province and finally giving non-Accredited Investors the right to invest outside of the public markets and GICs. Having witnessed the risk that overregulation can have on the economy, the OSC is making changes that support capital formation while still keeping investor protection front of mind, approaching the proper balance of their dual mandates.

On the other hand, to the dismay of an industry that underwent a complete regulatory overhaul not four years ago, the ASC (who ultimately seems to be driving the CSA proposal), is proposing, without industry consultation or evidence, to take away investor rights by implementing draconian investment limits taking away long held freedoms enjoyed by Albertans. This is either an indication that they do not believe the overarching piece of legislation they helped create only 4 years ago is working or that they're maintaining a bias against an entire industry that was insufficiently regulated in the past. The pre 31-103 Exempt Market will be remembered as a regime that was too much in favour of capital formation with little investor protection and this proposal would move the scales to the other end of the spectrum at the cost of the economy with no justification for doing so.

CSA staff must realize that as an industry we are very cognisant of the fact that the more satisfied our investors, the more the Exempt Market and our respective businesses will flourish. As such, we are fully in favour of well thought out additional investor protection mechanisms, just not ones that aim to kill our industry and take away investor rights, without justification.

In the future we encourage regulators to keep an open mind about the Exempt Market and take a more advanced collaborative approach with industry in the development of policy and best practices as consulting with those who actually 'Know the Clients' serves everyone best.

Appendix A: ASC Response to NEMA FOI Request

ASC

Alberta Securities Commission

DIRECT LINE: 403.355.4477
DIRECT FAX: 403.355.4479
E-MAIL: colin.mcdonald@asc.ca

May 2, 2014

Reference: FII-000152

VIA E-MAIL ONLY
craig@wemaonline.cn

National Exempt Market Association
c/o Craig Skauge
167 Coopers Hill SW
Airdrie, Alberta T4B OB9

Att'n: Mr. Craig Skauge, President

Rc: Access Request

Dear Mr. Skauge:

Rc: *Freedom of lnformatioll a11d Protectio11 of Privacy Act Acce!l'!l' to lnformatioll Reque.,·t*

We confirm receipt of your request dated April 3, 2014 for access to records containing the following information:

1. How many complaints in total did the ASC receive in 2011 and 2012 regarding those that "invested significant amounts under the OM Exemption and incurred significant losses"?

2. Notwithstanding when the complaints were made, what percentage of these investments were made before implementation ofNJ 31-103 and all the protections afforded by it or afterwards?

3. What percentage of the investments that resulted in the complaints were conducted through a Dealing Representative and Exempt Market dealer that were/are registered with the Alberta Securities Commission?

4. What percentage of the investments that resulted in the complaints were sold via a registrant involved those "few issuer groups raising the majority of the funds under the OM Exemption in Alberta (with) their "in-house" exempt market dealers selling the securities on their behalf?

5. Do you have similar date (sic) from 2013 you are able to provide?

The underlying complaints information, which is necessary to extrapolate a response to questions 1 to 5, is obtained as part of the investigative procedures of the Alberta Securities Commission ("ASC"). Therefore, the underlying information is protected from disclosure pursuant to s. 45 of the *Securities Act.* The Executive Director is also not prepared to authorize the release of this infonnation. For your convenience, the salient portions of section 45 read as follows:

> s. 45 *Investigation to be Confidelltial:* Anything acquired and all information or evidence obtained pursuant to an investigation is confidential and shall not be divulged except ... (b) where authorized by the Executive Director.

Section 46 of the *Alberta Securities Act* further expressly provides that section 45 overrides the provisions of the *Freedom of Information and Protection of Privacy Act (Alberta)* ("FOIP Act") to the extent there is any inconsistency between the two acts.

In any event, the specific records you are seeking in questions 1 through 5 do not exist. Furthermore, the ASC is not required to create the specific records pursuant to section 10(2) of the FOIP Act, which contains the only obligation for a public body to create records in response to an access to information request. Section 10(2) reads as follows:

> The head of a public body must create a record for an applicant if
> (a) the record can be created from a record that is in electronic form and in the custody or under the control of the public body, using its normal computer hardware and software and technical expertise, and
> (b) creating the record would not unreasonably interfere with the operations of the public body.

The underlying complaints information necessary to create the records is embedded primarily in paper-based investigation records, not in electronic format. The amount of time and resources required to extract this information from the ASC's extensive paper-based investigation records would unreasonably interfere with ASC's operations. It would require the ASC to hire additional staff and we estimate that it would take weeks to create the records specifically requested.

Under section 65 of the *Freedom of Information and Protection of Privacy Act*, you may ask the Information and Privacy Commissioner to review the ASC's determination of this matter. You have 60 days from the date of this notice to request a review by writing to the Information and Privacy Commissioner at 410, 9925 – 109 Street, Edmonton, Alberta, T5K *218*.

Section 67(1) of the *Freedom of Information and Protection of Privacy Act* requires the Commissioner to give a copy of your request for review to the head of a public body and to any other person who, in the Commissioner's opinion, is affected by the request. Therefore your request for review should not contain any information that you do not wish exchanged with the other parties.

If you wish to request a review, please provide the Office of the Commissioner with the following information: (i) The reference number quoted at the top of this notice; (ii) A copy of this letter; and (iii) A copy of your original request for information that you sent to the Alberta Securities Commission.

Yours truly,

Colin McDonald
Corporate Secretary & Senior Legal Counsel

Appendix B: TSX Venture New Issuer Performance 2011-2013

Date Listed	Company	Ticker	IPO Price	Last Price	% Gain (Loss)	Status
07-Jan-11	Gatekeeper Systems Inc.	GSI	0.250	0.155	-38%	Active
10-Jan-11	Otterburn Resources Corp.	OBN	0.150	0.110	-27%	Active
10-Jan-11	New Destiny Mining Corp.	NED	0.150	0.025	-83%	Active
11-Jan-11	Focused Capital Corp.	FLO.H	0.150	0.050	-67%	Active
17-Jan-11	Canadian Platinum Corp.	CPC	0.200	0.010	-95%	Active
17-Jan-11	Annidis Corporation	RHA	0.200	0.250	25%	Active
18-Jan-11	Margaux Resources Ltd.	MRL	0.100	0.450	350%	Active
21-Jan-11	Guerrero Exploration Inc.	GEX	0.300	0.005	-98%	Active
25-Jan-11	Banyan Gold Corp.	BYN	0.150	0.045	-70%	Active
31-Jan-11	Metron Capital Corp.	MCN.P	0.100	0.145	45%	Suspended
02-Feb-11	Canada Coal Inc.	CCK	0.200	0.045	-78%	Active
02-Feb-11	Altiplano Minerals Ltd.	APN	0.150	0.040	-73%	Active
08-Feb-11	Leo Acquisitions Corp.	LEQ.P	0.100	0.005	-95%	Suspended
09-Feb-11	Surrey Capital Corp.	SYC.P	0.100	0.030	-70%	Active
10-Feb-11	First Americas Gold Corp.	FAC	0.200	0.030	-85%	Active
11-Feb-11	Entourage Metals Ltd.	EMT	0.500	0.125	-75%	Active
15-Feb-11	Montero Mining and Exploration Ltd.	MON	0.500	0.035	-93%	Active
16-Feb-11	Revolver Resources Inc.	RZ	0.150	0.010	-93%	Active
18-Feb-11	Go Capital I, Inc.	GOC.H	0.200	0.020	-90%	Active
24-Feb-11	Javelle Capital Corp.	JVL.H	0.100	0.010	-90%	Active
28-Feb-11	QMC Quantum Minerals Corp.	QMC	0.200	0.050	-75%	Active
28-Feb-11	Kairos Capital Corp.	KRS	0.100	0.045	-55%	Active
02-Mar-11	Redquest Capital Corp.	RQM.H	0.100	0.010	-90%	Active
07-Mar-11	CapGain Properties Inc.	CPP	0.100	0.080	-20%	Active
08-Mar-11	Iledor Exploration Corp.	ILE	0.100	0.040	-60%	Suspended
10-Mar-11	Penfold Capital Acquisition IV Corporation	SEL	0.100	0.085	-15%	Active
17-Mar-11	Chinapintza Mining Corp.	CPA	0.100	0.040	-60%	Active
21-Mar-11	Mission Ready Services Inc.	MRS	0.100	0.250	150%	Active
22-Mar-11	Snow Eagle Resources Ltd.	SEG.H	0.100	0.010	-90%	Active
28-Mar-11	Porto Energy Corp.	PEC	1.000	0.010	-99%	Active
28-Mar-11	Kirkcaldy Capital Corp.	KRK.H	0.200	0.120	-40%	Active
29-Mar-11	KR Investment Ltd.	KR	0.100	0.150	50%	Active
05-Apr-11	Zephyr Minerals Ltd.	ZFR	0.100	0.150	50%	Active
05-Apr-11	HFX Holding Corp.	HXC	0.100	0.055	-45%	Active
08-Apr-11	Smart Employee Benefits Inc.	SEB	0.200	0.500	150%	Active
15-Apr-11	Natan Resources Ltd.	NRL	0.100	0.030	-70%	Active
18-Apr-11	Bullman Ventures Inc.	BUL	0.100	0.250	150%	Active
20-Apr-11	Northern Graphite Corporation	NGC	0.500	0.750	50%	Active
29-Apr-11	Gold Royalties Corporation	GRO	0.100	0.285	185%	Active
03-May-11	Oakham Capital Corp.	OKM.H	0.100	0.020	-80%	Active
09-May-11	Trident Gold Corp.	TTG	0.200	0.025	-88%	Active
10-May-11	Spectra7 Microsystems Inc.	SEV	0.200	0.375	88%	Active
12-May-11	North Sur Resources Inc.	NST	0.100	0.025	-75%	Active
12-May-11	Mammoth Resources Corp.	MTH	0.100	0.040	-60%	Active
12-May-11	Tango Gold Mines Inc.	TGV	0.250	0.050	-80%	Active
16-May-11	Brazil Resources Inc.	BRI	0.650	0.940	45%	Active
18-May-11	Kramer Capital Corp.	KRM.H	0.200	0.090	-55%	Active
19-May-11	Monster Mining Corp.	MAN	0.400	0.015	-96%	Active
24-May-11	Zidane Capital Corp.	ZZE.H	0.200	0.200	0%	Active
01-Jun-11	Aston Bay Holdings Ltd.	BAY	0.200	0.210	5%	Active
01-Jun-11	Carrie Arran Resources Inc.	SCO	0.200	0.120	-40%	Active
06-Jun-11	Gonzaga Resources Ltd.	GN	0.150	0.090	-40%	Active
09-Jun-11	Oxford Resources Inc.	OXI	0.150	0.100	-33%	Active
10-Jun-11	Flinders Resources Ltd.	FDR	0.100	0.790	690%	Active
14-Jun-11	Monarques Resources Inc.	MQR	0.400	0.110	-73%	Active
21-Jun-11	Oakmont Capital Corp.	OMK.P	0.100	0.075	-25%	Active
23-Jun-11	Goldstar Minerals Inc.	GDM	0.200	0.070	-65%	Active
28-Jun-11	Red Eagle Mining Corporation	RD	1.250	0.255	-80%	Active
28-Jun-11	Bluerock Ventures Corp.	BCR.H	0.100	0.020	-80%	Active
29-Jun-11	OneRoof Energy Group, Inc.	ON	0.200	1.750	775%	Active
04-Jul-11	Bravura Ventures Corp.	BVQ	0.150	0.035	-77%	Active
05-Jul-11	Saber Capital Corp.	SAB.H	0.100	0.100	0%	Active
05-Jul-11	Credent Capital Corp.	CDT.H	0.100	0.100	0%	Active
05-Jul-11	Pivot Technology Solutions, Inc.	PTG	0.100	0.170	70%	Active
07-Jul-11	Goldeneye Resources Corp.	GOE	0.100	0.035	-65%	Active
08-Jul-11	Samco Gold Ltd.	SGA	1.100	0.220	-80%	Active
13-Jul-11	Red Star Capital Ventures Inc.	RSM.H	0.100	0.010	-90%	Active
14-Jul-11	Equitorial Capital Corp.	EXX	0.100	0.210	110%	Active
19-Jul-11	Mason Graphite Inc.	LLG	0.200	0.630	215%	Active
21-Jul-11	Datum Ventures Inc.	DAT.H	0.100	0.050	-50%	Active
28-Jul-11	Alchemist Mining Inc.	AMS	0.100	0.070	-30%	Active
29-Jul-11	Noram Ventures Inc.	NRM	0.200	0.045	-78%	Active
29-Jul-11	Delta Gold Corporation	DLT	0.100	0.020	-80%	Active
02-Aug-11	New Zealand Energy Corp.	NZ	1.000	0.140	-86%	Active
03-Aug-11	Victory Ventures Inc.	VVN	0.200	0.030	-85%	Active

03-Aug-11	Goldspike Exploration Inc.	GSE	0.250	0.080	-68%	Active
03-Aug-11	Canadian Silver Hunter Inc.	AGH	0.250	0.045	-82%	Active
08-Aug-11	ExplorEx Capital Ltd.	EX.P	0.100	0.055	-45%	Active
09-Aug-11	Tiller Resources Ltd.	TIR	0.200	0.155	-23%	Active
09-Aug-11	Miocene Metals Ltd.	MII	0.360	0.010	-97%	Active
09-Aug-11	Aurvista Gold Corp.	AVA	1.000	0.045	-96%	Active
11-Aug-11	Asher Resources Corp.	ACN	0.200	0.070	-65%	Active
12-Aug-11	Naturally Splendid Enterprises Ltd.	NSP	0.100	0.295	195%	Active
12-Aug-11	Artisan Energy Corporation	AEC	0.100	0.280	180%	Active
18-Aug-11	First Growth Holdings Ltd.	FGH	0.100	0.160	60%	Active
22-Aug-11	ISIS Lab Corporation	LAB	0.100	0.305	205%	Active
25-Aug-11	High North Resources Ltd.	HN	0.100	0.620	520%	Active
25-Aug-11	Granite Creek Gold Ltd.	GCX	0.200	0.035	-83%	Active
26-Aug-11	Transition Metals Corp.	XTM	0.350	0.395	13%	Active
26-Aug-11	Northern Iron Corp.	NFE	0.300	0.030	-90%	Active
26-Aug-11	Blue River Resources Ltd.	BXR	0.200	0.115	-43%	Active
01-Sep-11	Sunora Foods Inc.	SNF	0.100	0.150	50%	Active
07-Sep-11	Gainey Capital Corp.	GNC	0.100	0.230	130%	Active
09-Sep-11	Avanti Energy Inc.	AVN	0.100	0.330	230%	Active
12-Sep-11	Cairo Resources Ltd	QAI.H	0.100	0.075	-25%	Active
14-Sep-11	PJX Resources Inc.	PJX	0.200	0.150	-25%	Active
23-Sep-11	Urbanimmersive Technologies Inc.	UI	0.500	0.130	-74%	Active
26-Sep-11	Earny Resources Ltd.	ERN	0.100	0.100	0%	Active
27-Sep-11	First Mountain Exploration Ltd.	FMX	0.200	0.030	-85%	Active
28-Sep-11	Clean Seed Capital Group Ltd.	CSX	0.200	0.600	200%	Active
29-Sep-11	Agility Health Inc.	AHI	0.100	0.750	650%	Active
29-Sep-11	First Global Data Ltd.	FGD	0.100	0.150	50%	Active
03-Oct-11	Sanction Capital Corp.	SRP.H	0.100	0.005	-95%	Active
03-Oct-11	88 Capital Corp.	EEC	0.100	0.205	105%	Active
06-Oct-11	Rotation Minerals Ltd.	ROT	0.150	2.080	1287%	Active
07-Oct-11	Santacruz Silver Mining Ltd.	SCZ	1.850	0.820	-56%	Active
12-Oct-11	EXO U Inc.	EXO	0.200	1.330	565%	Active
26-Oct-11	Magnum Goldcorp Inc.	MGI	0.100	0.035	-65%	Active
28-Oct-11	Banks Island Gold Ltd.	BOZ	0.250	0.485	94%	Active
31-Oct-11	Pro Real Estate Investment Trust	TAG	0.200	2.070	935%	Active
01-Nov-11	Cinaport Acquisition Corp.	CPQ.H	0.100	0.010	-90%	Active
02-Nov-11	San Antonio Ventures Inc.	SNN	0.200	0.100	-50%	Active
03-Nov-11	Sarama Resources Ltd.	SWA	0.900	0.150	-83%	Active
07-Nov-11	Great Prairie Energy Services Inc.	GPE	0.100	0.380	280%	Active
10-Nov-11	Abcana Capital Inc.	ABQ.H	0.100	0.110	10%	Active
14-Nov-11	Vector Resources Inc.	VCR.H	0.200	0.030	-85%	Active
16-Nov-11	Damon Capital Corp.	DAM.H	0.100	0.040	-60%	Active
18-Nov-11	Signature Resources Ltd.	SGU	0.100	0.020	-80%	Active
21-Nov-11	Rokmaster Resources Corp.	RKR	0.200	0.135	-33%	Active
21-Nov-11	Inform Exploration Corp.	IX	0.200	0.160	-20%	Active
23-Nov-11	Algold Resources Ltd.	ALG	0.150	0.130	-13%	Active
23-Nov-11	CT Developers Ltd.	DEV.P	0.200	0.200	0%	Suspended
25-Nov-11	Arkadia Capital Corp.	AKC.P	0.200	0.230	15%	Suspended
29-Nov-11	TG Residential Value Properties Ltd.	TG.H	0.100	0.140	40%	Active
30-Nov-11	Folkstone Capital Corp.	FKS.P	0.100	0.070	-30%	Active
02-Dec-11	Madison Capital Corporation	RTI	0.100	0.065	-35%	Active
02-Dec-11	Capstream Ventures Inc.	CSP.H	0.100	0.090	-10%	Active
07-Dec-11	Gstaad Capital Corp.	GTD.H	0.100	0.045	-55%	Active
07-Dec-11	Kesselrun Resources Ltd.	KES	0.100	0.025	-75%	Active
13-Dec-11	Way Ventures Inc.	WAY.P	0.100	0.005	-95%	Active
13-Dec-11	Wangton Capital Corp.	WT.H	0.100	0.050	-50%	Active
13-Dec-11	Everfront Ventures Corp.	EVC.H	0.200	0.020	-90%	Active
13-Dec-11	Desmond Investments Ltd.	DLC	0.100	0.200	100%	Active
20-Dec-11	Black Sparrow Capital Corp.	BLC.H	0.100	0.040	-60%	Active
22-Dec-11	Petrox Capital Corp.	PTC	0.100	0.075	-25%	Active
23-Dec-11	Northern Aspect Resources Ltd.	NTH.P	0.200	0.050	-75%	Suspended
23-Dec-11	Sonoma Resources Inc.	SRQ	0.200	0.060	-70%	Active
28-Dec-11	Focused Capital II Corp.	FAV.H	0.200	0.015	-93%	Active
29-Dec-11	Mantra Capital Corp.	MTR	0.100	0.195	95%	Active
06-Jan-12	Silk Road Energy Inc.	SLK	0.100	0.200	100%	Active
09-Jan-12	Signal Exploration Inc	SNL	0.150	0.045	-70%	Active
17-Jan-12	Margaux Red Capital Inc.	MXC.H	0.100	0.110	10%	Suspended
19-Jan-12	Infrastructure Materials Corp.	IFM	0.100	0.010	-90%	Active
23-Jan-12	Khalkos Exploration Inc.	KAS	0.200	0.065	-68%	Active
23-Jan-12	Lamelee Iron Ore Ltd.	LIR	0.150	0.120	-20%	Active
24-Jan-12	MCM Capital One Inc.	ZGN.H	0.200	0.200	-53%	Suspended
03-Feb-12	Morgan Resources Corp.	MOR	0.100	0.095	0%	Active
06-Feb-12	MatNic Resources Inc.	MIK	0.200	0.100	325%	Active
06-Feb-12	Less Mess Storage Inc.	LMS	0.150	0.850	467%	Active
07-Feb-12	Boost Capital Corp.	BST.P	0.100	0.150	50%	Suspended
10-Feb-12	Stria Capital Inc.	SRA	0.100	0.180	80%	Active

10-Feb-12	Mincom Capital Inc.	MOI	0.100	0.180	80%	Active
13-Feb-12	Northern Frontier Corp.	FFF	0.200	3.400	1600%	Active
15-Feb-12	Plicit Capital Corp.	PLP.P	0.100	0.100	0%	Suspended
23-Feb-12	Vivione Biosciences Inc.	VBI	0.200	0.310	55%	Active
27-Feb-12	Bold Stroke Ventures Inc.	BSV.P	0.100	0.085	-15%	Suspended
28-Feb-12	Asante Gold Corp.	ASE	0.500	0.085	-83%	Active
05-Mar-12	Pediapharm Inc.	PDP	0.100	0.240	140%	Active
06-Mar-12	Manado Gold Corp.	MDO	0.150	0.060	-60%	Active
07-Mar-12	Diamond Estates Wines & Spirits Inc.	DWS	0.200	0.150	-25%	Active
08-Mar-12	Stratton Capital Corp.	SNK.P	0.100	0.070	-30%	Suspended
08-Mar-12	Pantheon Ventures Ltd.	PVX	0.150	0.015	-90%	Active
08-Mar-12	Nebo Capital Corp.	NBO.P	0.200	0.200	0%	Halt
12-Mar-12	Atico Mining Corporation	ATY	0.500	0.800	60%	Active
14-Mar-12	Thunderstruck Resources Ltd.	AWE.P	0.100	0.170	70%	Active
15-Mar-12	Altitude Resources Inc.	ALI	0.200	0.310	55%	Active
15-Mar-12	Triumph Ventures II Corporation	TVT.P	0.200	0.010	-95%	Suspended
16-Mar-12	Unite Capital Corp.	UNT.P	0.100	0.050	-50%	Suspended
20-Mar-12	Phoenix Gold Resources Corp.	PXA	0.100	0.065	-35%	Active
23-Mar-12	Solutions4CO2 Inc.	SFC	0.200	0.220	10%	Active
27-Mar-12	Canoe Mining Ventures Corp.	CLV	0.200	0.210	5%	Active
27-Mar-12	Lorne Park Capital Partners Inc.	LPC	0.100	0.300	200%	Active
30-Mar-12	Unique Resources Corp.	UQ	0.150	0.150	0%	Active
09-Apr-12	Plata Latina Minerals Corp.	PLA	0.500	0.095	-81%	Active
10-Apr-12	Black Springs Capital Corp.	BSG.P	0.100	0.075	-25%	Suspended
11-Apr-12	Interconnect Ventures Corp.	IVC	0.250	0.300	20%	Active
16-Apr-12	Infinity Minerals Corp.	IFN	0.150	0.200	33%	Active
16-Apr-12	Cardiff Energy Corp.	CRS	0.200	0.025	-88%	Active
24-Apr-12	Input Capital Corp.	INP	0.100	2.180	2080%	Active
24-Apr-12	ASB Capital Inc.	ASB.P	0.200	0.080	-60%	Suspended
25-Apr-12	Yongsheng Capital Inc.	YSC.P	0.100	0.020	-80%	Suspended
30-Apr-12	Symbio Capital Corp.	SYB.P	0.200	0.050	-75%	Suspended
01-May-12	Azincourt Uranium Inc.	AAZ	0.150	0.145	-3%	Active
01-May-12	Alexandra Capital Corp.	AXC.P	0.100	0.050	-50%	Suspended
02-May-12	Ituna Capital Corp.	TUN.P	0.200	0.035	-83%	Halt
03-May-12	SouthTech Capital Corp.	STU.P	0.100	0.170	70%	Suspended
03-May-12	bioMmune Technologies Inc.	IMU	0.100	0.220	120%	Active
03-May-12	Lateral Capital Corp.	LCP	0.100	0.100	0%	Active
03-May-12	Gold Ridge Exploration Corp.	GEA	0.150	0.040	-73%	Active
04-May-12	Walmer Capital Corp.	WAL.P	0.100	0.045	-55%	Suspended
14-May-12	Spirit Bear Capital Corp.	SBG.P	0.100	0.090	-10%	Active
16-May-12	Nouveau Monde Mining Enterprises Inc.	NOU	0.200	0.140	-30%	Active
18-May-12	Sojourn Ventures Inc.	SOJ	0.100	0.065	-35%	Active
18-May-12	Golden Sun Capital Inc.	GST.P	0.200	0.050	-75%	Active
24-May-12	Elcora Resources Corp.	ERA	0.100	0.200	100%	Active
28-May-12	Zadar Ventures Ltd.	ZAD	0.250	0.100	-60%	Active
29-May-12	Precipitate Gold Corp.	PRG	0.400	0.210	-48%	Active
29-May-12	Jericho Oil Corp.	JCO	0.250	0.730	192%	Active
30-May-12	Atoro Capital Corp.	TTO.P	0.100	0.045	-55%	Halt
12-Jun-12	Killbear Acquisition Corp.	KBA.P	0.100	0.100	0%	Active
19-Jun-12	Bethpage Capital Corp.	BET	0.150	0.050	-67%	Active
26-Jun-12	Crest Petroleum Corp.	CTP.P	0.100	0.280	180%	Halt
26-Jun-12	Nobel Real Estate Investment Trust	NEL.UN	0.200	0.065	-68%	Halt
29-Jun-12	Triox Ltd.	TTL.P	0.100	0.110	10%	Halt
29-Jun-12	Walker River Resources Corp.	WRR	0.150	0.030	-80%	Active
10-Jul-12	Pure Multi-Family REIT LP	RUF.U	5.000	4.800	-4%	Active
11-Jul-12	Blackheath Resources Inc.	BHR	0.350	0.300	-14%	Active
13-Jul-12	Noka Resources Inc.	NX	0.200	0.060	-70%	Active
20-Jul-12	Wildlaw Capital CPC 2 Inc.	WLD.P	0.100	0.015	-85%	Active
23-Jul-12	West Melville Metals Inc.	WMM	0.500	0.055	-89%	Active
30-Jul-12	TLO Capital Corp.	TEE.P	0.100	0.050	-50%	Active
29-Aug-12	Niagara Ventures Corporation	NIA.P	0.200	0.120	-40%	Active
31-Aug-12	Universal Ventures Inc.	UN	0.250	0.420	68%	Active
31-Aug-12	Khayyam Minerals Ltd.	KYY.P	0.100	0.160	60%	Halt
07-Sep-12	Scorpion Resources Inc.	SR.P	0.100	0.040	-60%	Active
10-Sep-12	Quartet Resources Ltd.	QRL.P	0.100	0.130	30%	Active
12-Sep-12	OneCap Investment Corp.	OIC.P	0.200	0.200	0%	Halt
20-Sep-12	Benz Capital Corp.	BZ	0.100	0.600	500%	Active
24-Sep-12	Westham Resources Corp.	WHR.P	0.100	0.015	-85%	Active
04-Oct-12	Oriana Resources Corp.	OUP.P	0.100	0.090	-10%	Halt
19-Oct-12	Navy Resources Corp.	NVY	0.100	0.045	-55%	Active
19-Oct-12	Bluefire Mining Corp.	BFM	0.150	0.250	67%	Active
22-Oct-12	Wolfden Resources Corp.	WLF	0.500	0.215	-57%	Active
23-Oct-12	Adent Capital Corp.	ANT.P	0.100	0.025	-75%	Active
24-Oct-12	Vela Minerals Ltd.	VLA	0.150	0.040	-73%	Active
24-Oct-12	Broome Capital Inc.	BCP.P	0.100	0.120	20%	Active
26-Oct-12	Viscount Mining Corp.	VML	0.100	0.230	130%	Suspended

31-Oct-12	Rheingold Exploration Corp.	RGE	0.150	0.050	-67%	Active
31-Oct-12	Brades Resource Corp.	BRA	0.150	0.080	-47%	Active
01-Nov-12	Trigold Resources Inc.	TGD	0.150	0.100	-33%	Active
08-Nov-12	Branco Resources Ltd.	BNL.P	0.100	0.105	5%	Active
09-Nov-12	Royal Sapphire Corp.	RSL	0.200	0.040	-80%	Active
14-Nov-12	Kitrinor Metals Inc.	KIT	0.250	0.015	-94%	Active
14-Nov-12	Aegean Metals Group Inc.	AGN	0.150	0.060	-60%	Active
16-Nov-12	Richmond Road Capital Corp.	RRD.P	0.100	0.020	-80%	Active
27-Nov-12	Deveron Resources Ltd.	DVR	0.250	0.150	-40%	Active
05-Dec-12	Montan Capital Corp.	MO.P	0.200	0.120	-40%	Active
11-Dec-12	Red Hut Metals Inc.	ROB	0.150	0.390	160%	Active
17-Dec-12	Orefinders Resources Inc.	ORX	0.500	0.090	-82%	Active
20-Dec-12	Technical Ventures RX Corp.	TIK.P	0.100	0.075	-25%	Halt
20-Dec-12	CWN Mining Acquisition Corp.	CWN.P	0.100	0.200	100%	Active
21-Dec-12	Remo Resources Inc.	RER	0.200	0.200	0%	Active
28-Dec-12	Corporate Catalyst Acquisition Inc.	CII.P	0.200	0.210	5%	Active
31-Dec-12	Ovid Capital Ventures Inc.	OCA.P	0.100	0.150	50%	Active
22-Jan-13	Hombre Capital Inc.	HOM.P	0.100	0.100	0%	Halted - Nov. 12/13
31-Jan-13	Alpha Peak Leisure Inc.	AAP.P	0.100	1.400	1300%	Active
01-Feb-13	ThermoCeramix Corporation	TCX	0.200	1.020	410%	Active
20-Feb-13	Pepcap Ventures Inc.	WAV.P	0.100	0.120	20%	Halted - June 26/13
25-Feb-13	Zorro Capital Inc.	ZOR.P	0.100	0.110	10%	Active
22-Mar-13	Red Rock Capital Corp.	RCC.P	0.100	0.120	20%	Active
22-Mar-13	Morro Bay Resources Ltd.	MRB	0.100	0.070	-30%	Active
28-Mar-13	Prospect Park Capital Corp.	PPK.P	0.200	0.230	15%	Halted - Sept. 12/13
28-Mar-13	Elevation Capital Corp.	ELE.P	0.100	0.100	0%	Active
04-Apr-13	Black Widow Resources Inc.	BWR	0.200	0.070	-65%	Active
08-Apr-13	Maple Leaf Resource Corp.	MPL.P	0.100	0.040	-60%	Active
10-Apr-13	Golden Peak Minerals Inc.	GP	0.150	0.130	-13%	Active
11-Apr-13	Maplewood International REIT	MWI.UN	0.100	1.780	1680%	Active
17-Apr-13	Aurania Resources Ltd.	AOZ	0.400	0.445	11%	Active
18-Apr-13	Starlight U.S. Multi-Family Core Fund	UMF.A	10.000	10.450	4%	Active
18-Apr-13	Southern Sun Minerals Inc.	SSI.P	0.100	0.170	70%	Active
22-Apr-13	Rosa Capital Inc.	RSA.P	0.200	0.150	-25%	Active
07-May-13	Exito Energy II Inc.	EXI.P	0.100	0.100	0%	Active
14-May-13	POCML 2 Inc.	PCC.P	0.150	0.200	33%	Halted - April 14/14
15-May-13	Astar Minerals Ltd.	TAR	0.150	0.150	0%	Active
24-May-13	SFR Energy Ltd.	SFQ.P	0.100	0.100	0%	Halted
07-Jun-13	Karsten Energy Corp.	KAY.P	0.100	0.125	25%	Active
14-Jun-13	Gulfstream Acquisition 1 Corp.	GFL.P	0.100	0.450	350%	Active
18-Jun-13	Antibe Therapeutics Inc.	ATE	0.550	0.510	-7%	Active
19-Jun-13	Plate Resources Inc.	PLR	0.150	0.190	27%	Active
27-Jun-13	Turquoise Capital Corp.	TQC.P	0.100	0.090	-10%	Active
28-Jun-13	SoMedia Networks Inc.	VID	0.850	0.190	-78%	Active
12-Jul-13	Revive Therapeutics Ltd.	RVV	0.300	0.520	73%	Active
12-Jul-13	Boulevard Industrial Real Estate Investment Trust	BVD.UN	0.100	0.160	60%	Active
18-Jul-13	Oremex Gold Inc.	OAU.H	0.100	0.140	40%	Suspended
23-Jul-13	Friday Capital Inc.	FYC.P	0.100	0.050	-50%	Active
08-Aug-13	Maple Power Capital Corporation	MPX.P	0.100	0.100	0%	Active
28-Aug-13	Wolfpack Capital Corp.	WLP.P	0.100	0.130	30%	Active
04-Sep-13	Shogun Capital Corp.	SHO.P	0.100	0.125	25%	Halted
04-Sep-13	Security Devices International Inc.	SDZ	0.400	0.280	-30%	Active
10-Sep-13	Aurora Spine Corporation	ASG	0.700	3.050	336%	Active
16-Sep-13	Aumento Capital IV Corporation	ACV.P	0.600	0.600	0%	Halted
23-Sep-13	Decisive Dividend Corporation	DE.P	1.000	1.000	0%	Active
27-Sep-13	BHK Resources Inc.	BHK.P	0.100	0.100	0%	Halted
17-Oct-13	WB III Acquisition Corp.	WXX.P	0.100	0.055	-45%	Active
22-Oct-13	Savoy Ventures Inc.	SVO	0.150	0.170	13%	Active
22-Oct-13	Plymouth Realty Capital Corp.	PH.P	0.100	0.090	-10%	Halted
28-Oct-13	Wise Oakwood Ventures Inc.	WOW.P	0.100	0.080	-20%	Active
15-Nov-13	Starlight U.S. Multi-Family (No. 2) Core Fund	SUD.A	10.000	10.360	4%	Active
20-Nov-13	Element 79 Capital Inc.	EMS.P	0.150	0.200	33%	Active
13-Dec-13	Grande West Transporation Group Inc.	BUS	0.500	0.480	-4%	Active
16-Dec-13	West Point Resources Inc.	WPO	0.150	0.050	-67%	Halted
18-Dec-13	Inovent Capital Inc.	IVQ.P	0.100	0.070	-30%	Active
23-Dec-13	Builders Capital Mortgage Corp.	BCF	10.000	9.650	-4%	Active

July 6, 2015

Kevin Redden
Director, Corporate Finance
Nova Scotia Securities Commission
Suite 400, Duke Tower 5251 Duke Street
Halifax, Nova Scotia B3J 1P3

Dear Mr. Redden,

Re: Nova Scotia Proposed Amendments Relating to the Offering Memorandum ("OM") Exemption: Notice No. 45-716

On behalf of the Canadian Mortgage Brokers Association (CMBA), I would like to make submissions on proposed amendments to NI 45-106.

By way of background, CMBA is an inter-jurisdictional umbrella association consisting of provincial mortgage broker associations in Canada, including the Mortgage Brokers Association of Atlantic Canada. Many of our members fund private mortgages through mortgage investment corporations (MICs). In addition, we also represent MICs and other private mortgage lenders.

The NCSC Proposal

The rationale for the NSSC proposal is that "Harmonized offering memorandum rules will benefit Nova Scotia issuers by increasing the number of jurisdictions where an offering can be made to raise capital without materially increasing their compliance burden and costs. Harmonized offering memorandum rules will benefit Nova Scotia investors by enabling them to participate in a greater number of offerings from other jurisdictions. If Nova Scotia did not harmonize with the other jurisdictions many issuers may not extend their offering to Nova Scotia investors as it would also increase the compliance burden and costs to comply with the Nova Scotia regime. While these changes may impose new conditions on the use of the offering memorandum exemption in Nova Scotia the resulting harmonization will decrease the complexity and likely increase its use in the Canadian exempt market."

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The problem with this rationale is that it amounts to harmonization for harmonization's sake without an analyses of whether the proposed changes are good policy decisions which benefit the public interest. It amounts to imposing change just because others have imposed those changes elsewhere. Changes which impose bureaucratic hurdles and red tape on industry should never be imposed unless there is a demonstrated need which furthers public protection. The jurisdiction of British Columbia, which has the most experience out of any of the provinces with the OM exemption, has NOT participated in the proposal to place investor cap restrictions on the OM exemption with Alberta, Saskatchewan, Ontario, New Brunswick and Quebec. Regulators should always strive for "right touch regulation", which protects the public from harm with the least level of government burden on industry. Has the NSSC explored the British Columbia OM model and its success in achieving consumer protection without the intrusive restrictions contained in the NSSC proposal? If the NSSC has not done so, we would urge them to review BC's OM model prior to opting for a significantly more restrictive OM regime.

In addition, the rationale appears to be seriously flawed. Investors will follow the path of least restriction and ease of access into investments. Imposing restrictions on Nova Scotia investors, which are equal to those in the 5 other provinces, is likely to cause those investors to consider investments in all 6 provinces as opposed to only those in Nova Scotia, thereby reducing the amount of capital flowing to Nova Scotia exempt investments. Capital will leak out of Nova Scotia with no incentive to draw in capital from other provinces. It is folly to think that imposing restrictions in one province to match those in other provinces will stimulate investor enticement. Implementation of the proposal could result in a sudden and dramatic demise of MICs and other investment vehicles in Nova Scotia. Whereas, maintaining the current OM exemption without new restrictions would keep current investors contributing funds to MICs and other investments, and may even convince investors from the other 5 provinces to consider those less restrictive exempt investments in Nova Scotia. Clearly investor restrictions will strangle current Nova Scotia investment entities without any upside and will challenge an already struggling economy in Nova Scotia.

There are two specific elements of the proposal which cause concern to our industry members in Nova Scotia: the $30,000 annual investor cap for eligible investors and the $100,000 investor cap for eligible investors who utilize the services of an exempt marker dealer, IIROC dealer or portfolio manager. We have the following issues with these two elements of the proposal.

Failure to Reduce Fraud

It is not entirely clear what the specific goals are of the OM investor caps. Are the goals to save investors from the folly of investing too much of their hard earned money in the exempt markets, or is it an effort to limit the harm to investors from investor frauds, such as ponzi schemes or sham investment entities? As you may be aware, government

regulation is usually ineffective at reducing fraud, as fraudsters never intend to comply with rules, particularly ones that would limit the funds they can misappropriate. Creating more rules or more restrictive rules will not change this unfortunate reality. Tackling investor fraud will likely require a collaborative effort between criminal justice systems, government regulators and the industry.

Failing to Empower Consumers

The governing principal behind the exempt market is that investors can choose to take on risk after receiving product suitability advice from registered exempt marker dealers (EMD). This is why they sign a risk acknowledgement form. In addition, investors can read an OM which contains details of the investment, which is often more detailed than a prospectus. The OM contains protections for investors, including the right to sue directors for misrepresentation and the right of rescission. Taking away investor choice by placing investor limits on OM exempt investments treats investors like children who cannot manage their own money and renders current investor protections redundant. We believe that consumers should ultimately be responsible for looking after their own interests and taking responsibility for their own choices. The goal of government should be to ensure that consumers are empowered to make informed, careful investment decisions. Providing consumers with relevant knowledge, product suitability advice and various OM remedies provides more powerful consumer protection than imposing a system of paternalistic regulation over them.

Enforcement Challenges

Annual investor caps appear to be cumbersome to administer. It is not entirely clear how the investor's limits will be tracked? What if investors are not honest in making investment declarations? Who takes action against the investor in this circumstance?

Impact on the Mortgage Investment Corporations and Consumers in Nova Scotia

Most MICs rely on the OM exemption to raise mortgage funds. MICs contribute millions of dollars' worth of mortgage principal to borrowers in Nova Scotia. Without MICs it would not be possible for many Nova Scotia residents to afford to own their own homes, and many businesses could not acquire the necessary capital for growth and development. The impact of the loss of MICs of in Nova Scotia would be profound and would include:

- The loss of employment from mortgage industry members and support staff who would no longer be arranging and administrating mortgages – also the loss of construction related employment from developers and builders who would not be able to finance new projects;
- The loss of safe and reliable investment opportunities for investors;

- The removal of private mortgage lenders from the marketplace, which will make it more challenging for borrowers to find available mortgage capital but also push private lending underground where there is no regulation; and
- Higher borrowing costs and less access to mortgage capital will lead to an increase in foreclosure rates and borrower defaults.

Creating investor caps on OM investments in Nova Scotia will not benefit Nova Scotia in any way: not investors, not industry, and not the economy. OM investor caps will instead cripple the economy, hamper investors and place road blocks in front of OM reliant industries, such as MICs. The NSSC proposal makes no sense. We urge the NSSC to maintain the current OM investment rules and not to implement the proposal.

Regards,

Samantha Gale
CMBA Executive Director