



INVESTMENT COUNSEL ASSOCIATION OF CANADA
Association des conseillers en gestion de portefeuille du Canada

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November 9, 2010

Leslie Rose,
Senior Legal Counsel, Corporate Finance
British Columbia Securities Commission

Dear Ms Rose,

Re: Response to British Columbia Securities Commission's ("BCSC") Request for Comment on Proposed Form 45-106F6 ("Proposed Form 45-106F6" or the "Proposed Form") British Columbia Report of Exempt Distribution and Amendments to National Instrument 45-106 Prospectus and Registration Exemptions

Background

The Investment Counsel Association of Canada ("ICAC"), through its Industry, Regulation and Tax Committee, is pleased to be given the opportunity to submit the following comments regarding BCSC's proposed Form 45-106F6 on behalf of its members.

The ICAC is the representative organization for portfolio managers in Canada. The ICAC was established in 1952 and its current members are responsible for managing in excess of \$750 billion of client assets in Canada. Member firms are only in the business of managing investments for clients in keeping with each client's needs, objectives and risk tolerances. The ICAC is in the midst of a rebranding and is transitioning to being renamed the **Portfolio Management Association of Canada**.

Comments

We are writing to you to express our opposition to the application of Proposed Form 45-106F1 to the distribution of "pooled fund" securities.

Approximately 70% of ICAC members provide advice to their clients through pooled funds that are distributed under the exemptions in National Instrument 45-106 *Prospectus and Registration Exemptions* ("NI 45-106"). Although the notice accompanying the publication of the Proposed Form specifically refers to venture capital issuers and the high-risk nature of distributions by those issuers, the proposed amendments to NI 45-106 and Companion Policy 45-106CP (the "Companion Policy") are not limited to venture capital issuers. Accordingly, ICAC members have a significant interest in the impact of the Proposed Form on their pooled funds and investors in those funds.

Under Item 4 of Proposed Form 45-106F6, pooled funds (or their managers) would be required to disclose the names, municipality and country of residence of all insiders and promoters of the fund, together with the total number of pooled fund securities and total dollar value of securities held by those individuals. Under Item 9 on Proposed Form 45-106F6, pooled funds (or their managers) would be required to disclose the names of all purchasers of pooled fund securities, together with the number of securities purchased and the dollar value of those securities. Unlike the information contained in Schedule 1 to the Proposed Form (and Schedule 1 to the existing Form 45-106F1), it is proposed that the information in Items 4 and 9 will be made public through the British Columbia Securities Commission's website. The BCSC has stated that the dissemination of personal information of purchasers and promoters of an issuer on a public website would promote more informed investment decisions and increased transparency of the issuer. In our view, this approach is directly contrary to the view expressed by the Canadian Securities Administrators (the "CSA"), including the BCSC, in section 5.1 of the Companion Policy, which indicates that the CSA "have determined that the information listed in Form 45-106F1 *Report of Exempt Distribution*, Schedule I discloses personal or other information of such a nature that the desirability of avoiding disclosure of this personal information outweighs the desirability of making the information available to the public for inspection".

We strongly urge the BCSC to reconsider its position with respect to Items 4 and 9 on Proposed Form 45-106F6 for the following reasons.

Firstly, we understand the BCSC's desire to provide greater transparency to potential investors in venture capital issuers. In the notice accompanying the publication of the Proposed Form, the BCSC stated that one of the perceived benefits of such disclosure is to 'support the financing activities of legitimate venture capital issuers'. Although we do not wish to comment extensively on whether the approach adopted by Proposed Form 45-106F6 will be effective in respect of venture capital investments, we do not understand how a form that is designed to be filed *after* the completion of a distribution will help *potential* investors, and we do not understand how *public* disclosure (as opposed to a less public type of disclosure) supports "legitimate" venture capital issuers.

Secondly, even if there is some potential benefit to public disclosure of personal information in respect of venture capital issuers, and that benefit outweighs the privacy concerns, we do not accept that the same argument can be made in respect of pooled funds. Pooled funds are commonly used as a vehicle for private wealth management and, in our view, investors have a legitimate expectation that the size and value of their investment in a pooled fund will remain a private matter.

Thirdly, some ICAC members that issue pooled funds encourage or require their officers to have a substantial amount of their personal financial wealth invested in the firm's pooled funds. Investing along side clients reduces potential conflict of interest and aligns investor and management interests. The benefit is that these individuals are on equal footing with arm's length clients. They willingly commit their wealth because they believe in the products that they sell. They also make this commitment with the understanding that their investments will be treated with the same respect for privacy that is afforded to any client. In our view, Proposed Form 45-106F6 is likely to work as a very serious disincentive to money managers investing in their own products and, therefore, being aligned with their investors. In the face of opposition from their portfolio management staff, we are

concerned that pooled fund manager will be forced to make a choice between changing Codes of Conduct, privacy policies and other 'pillars' of their governance and continuing to do business in British Columbia's exempt market. We do not believe that any of these developments would be in the best interests of pooled fund managers or, more importantly, British Columbia pooled fund investors.

Finally, we note that the Proposed Form and the proposed amendments to NI 45-106 and the Companion Policy do not appear to mandate that an issuer advise potential investors that certain of their personal information will be made public. However, we expect that a pooled fund (or its manager) that distributes its securities in the exempt market in British Columbia will now be well advised before accepting a subscription, to have a prospective client acknowledge that the client's name, the number and type of security purchased and the total purchase price will be posted on a public web site by the BCSC. We expect that this will discourage British Columbia investors from investing in pooled funds which might otherwise be in their best interests.

Thank you for the opportunity to provide comments on this proposal. We would, of course, be very happy to discuss any of our comments further with you.

Yours very truly,

INVESTMENT COUNSEL ASSOCIATION OF CANADA



Katie Walmsley
Executive Director



Mark Pratt
Chair, Industry Regulatory and Tax Committee