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PERFORMANCE THROUGH INNOVATION  
**BARCLAYS GLOBAL INVESTORS**

March 9, 2005

British Columbia Securities Commission  
Alberta Securities Commission  
Saskatchewan Securities Commission  
Ontario Securities Commission  
Securities Administration Branch, New Brunswick  
Office of the Attorney General, Prince Edward Island  
Nova Scotia Securities Commission  
Securities Commission of Newfoundland and Labrador  
Registrar of Securities, Department of Justice, Government of the Northwest Territories  
Registrar of Securities, Government of Yukon  
Registrar of Securities, Legal Registries Division, Dept. of Justice, Government of Nunavut

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Dear Sir/Madam ,

**Re: Request for Comments: Proposed National Instrument 45-106 and Companion Policy 45-106CP *Prospectus and Registration Exemptions* and Form 45-106F1, Form 45-106F2, Form 45-106F3 and Form 45-106F4**

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We at Barclays Global Investors Canada Limited (“Barclays”) believe that the Canadian Securities Administrators (“CSA”) have taken a significant and important step in harmonizing the majority of the prospectus and registration exemptions currently available across Canada. We thank you for your invitation to comment on Proposed National Instrument 45-106 and Companion Policy 45-106CP – *Prospectus and Registration Exemptions*, and Form 45-106F1, Form 45-106F2, Form 45-106F3 and Form 45-106F4 (the “Proposal”). We strongly believe in the value of meaningful dialogue between regulators and industry participants and commend the Canadian Securities Administrators for undertaking a thorough public consultation in connection with the Proposal.

Barclays, which currently manages over \$50 billion in assets, is one of Canada’s largest and fastest growing investment managers. We are not the manager of any traditional mutual funds but do manage the iUnits family of exchange-traded funds, the Barclays*funds* family of closed-end funds and use non-prospectused mutual funds (“pooled funds”) to a fairly significant extent in our core business of providing investment advisory services to Canadian pension funds and other institutional investors. Barclays is part of a global investment management business that manages over one and a half trillion dollars in assets and we therefore have very broad experience in regulatory approaches applied to this industry, including prospectus and registration exempt investment products. Our comments will primarily focus on the potential impact of the Proposal on our pooled fund products, which we distribute in reliance on the prospectus and registration exemptions. These funds make up a significant majority of our business in Canada.

## **General Comments**

We are very supportive of the CSA's move towards harmonizing and unifying the exempt distribution regime across Canada and commend the CSA's efforts in consolidating a majority of the exemptions currently utilized by investment managers such as Barclays. We are also very pleased that the CSA has recognized the impact of exempt market rules on investors, particularly institutional investors which are our primary client base, utilizing portfolio management services through pooled funds. We believe that the Proposal addresses our previous concerns outlined in other submissions (i.e. Ontario Securities Rule 45-501 and Multi-lateral Instrument 45-103) that the CSA must focus equally on the regulation of investment management services to institutional investors using pooled funds and not merely on regulating small and medium-sized businesses in their capital raising efforts.

While the move towards uniformity is commendable, we respectfully submit that the differences in the Proposal (i.e. the different definitions of accredited investors and different approaches to the offering memorandum exemption) still results in a general lack of harmonization across Canada. Instead of familiarizing itself with one set of rules, an issuer must still look at various local rules to ensure that the exemption is available in a particular jurisdiction. We doubt that the Proposal will reduce the overall costs to market participants as a review of the exempt distribution rules using one source is still unavailable. If the ultimate goal of the CSA is to harmonize securities legislation in Canada, as we continue to believe it should be, then it should begin by harmonizing this Proposal. Until such harmonization takes place, Canadian investors will continue to bear the costs resulting from their inability to obtain true economies of scale in selecting investment managers.

## **Responses to OSC Questions**

### ***Removal of restriction in Ontario for fully managed accounts to invest in securities of investment funds in reliance on accredited investor exemption (Section 2.3 – Accredited Investor)***

This is a positive and welcome change from the current Ontario rule. We strongly support this change in order to “level the playing field” for all fully managed accounts in Ontario. This change will more accurately reflect the practice within the institutional investment management business in using pooled fund investments in discretionary client accounts.

## **Specific Comments for Ontario**

### ***Elimination of the “universal registration” regime***

We would encourage the Ontario Securities Commission (“OSC”) to reconsider the elimination of the universal registration system and the need for limited market dealer registration. The elimination of this rule would be another step in harmonizing the exempt market regime across the country and would relieve an unwarranted regulatory burden.

We believe that the market intermediary rule is unnecessary in circumstances where the issuer is a mutual fund, the manager of the fund is registered with the Ontario Securities Commission and a form 45-501F1 is filed in respect of the issuance of units by that fund. The “universal registration system” was designed, appropriately we believe, to ensure that the OSC was aware of the level and type of exempt market activity taking place in Ontario. In particular, having knowledge of firms participating in exempt market activities is essential to the OSC’s ability to fulfill its mandate. However, where the relevant market participant is an OSC registrant, one that satisfies proficiency requirements far beyond those of a limited market dealer, the universal registration system clearly becomes an unnecessary compliance burden fulfilling no substantive purpose. We therefore urge you to eliminate the dealer registration requirement in respect of the issuance of mutual fund units the manager and/or trustee of which is a registrant and in respect of which a 45-501F1 is filed.

### ***Conclusion***

We thank you again for the opportunity to comment on the Proposed National Instrument 45-106 and Companion Policy 45-106CP *Prospectus and Registration Exemptions* and Form 45-106F1, Form 45-106F2, Form 45-106F3 and Form 45-106F4. Please contact the undersigned or Warren Collier (416-643-4075 or [warren.collier@barclaysglobal.com](mailto:warren.collier@barclaysglobal.com)) if you have any questions or would like additional information in respect of any of the points made in this letter.

Sincerely,

Rajiv Silgado  
President, CEO and CIO