

March 26, 2007

I am writing to provide feedback to your public consultation process for NI 31-103.

As a Certified financial planner and a small business owner, I have a keen interest in seeing greater efficiency and fairness in our current, fragmented regulatory system. The duplications and inconsistencies in our present systems add to my cost of doing business, and create confusion for clients who move between jurisdictions.

I have been following reports and discussions of CSA's regulatory reform process, and I have been encouraged by an apparent trend towards greater harmonization.

I was pleased to read in the January 13, 2006 "Registration Reform Concept Proposal" that the CSA proposed to allow representatives of registered firms to conduct their activities through a personal corporation (PC). Because I also am a representative of a registered mutual fund dealership, this structure would allow me to improve the tax position and planning opportunities available to my business. This (PC) structure already is available to other professionals in Alberta, and to similar businesses in most jurisdictions in Canada. Also, with the conditions included in the January 13, 2006 concept proposal, protection of the public would not be impaired under a PC structure.

I was therefore surprised and disappointed to find no mention of "Incorporated Representatives" in NI 31-103 when it was published in February.

When I contacted the CSA-rrp about this, I was informed that the Alberta Securities Commission (ASC) had raised concerns and that the ASC would continue to prohibit Representative Incorporation.

I have attempted to get clarification on the ASC's reasoning for this position. Apparently, the ASC believes that there still are outstanding issues that prevent them from supporting harmonization of Representative Incorporation. I understand these 'outstanding issues' to be:

1. **Firm liability for unpaid source deductions.** Apparently, the ASC is concerned about potential problems with source deductions and tax avoidance.
2. **Liability to investors.** Apparently, the ASC is concerned that the use of PCs clouds the liability chain.
3. **Ownership and activities of personal corporations.** Apparently, the ASC is concerned that the IDA and MFDA will resist restrictions on ownership of PCs to the registered individual and on the type of business to be conducted by those corporations.

None of these questions should stand in the way of harmonization. At best they are nothing more than fluff. I rebut the ASC's concerns as follows:

1. **Firm liability for unpaid source deductions.** This already has been addressed. CRA offered its opinion on this in 2004, stating "It is the CRA's general position that if an insurance agent, realtor, mutual fund salesperson or other professional is legally, whether contractually or by

statute, precluded from assigning his/her commissions to a corporation, then the commission income must be reported by the individual, and cannot be reported through a corporation. Where no such legal restriction on the transfer of commissions to a corporation and the corporation is actively carrying on the business, the income must be reported by the corporation.”

This seems to be a classic “Catch 22”, with (only) the ASC standing in the way of clarity!

2. ***Liability to investors.*** This is not a problem in other professions and regulatory regimes. For example, the corporate veil already is pierced on the insurance side of my business by contracts with insurance companies.
3. ***Ownership and activities of personal corporations.*** My licenses already carry restrictions that effectively address this concern.

I can only conclude that the ASC has no rational objection to harmonization of Representative Incorporation, but instead has chosen a path of stubborn jurisdictional elitism.

I hope you find this feedback constructive, and that you will reintroduce the proposal to allow representatives of registered firms to conduct their activities through a personal corporation.

Sincerely,

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