

**Re: Comments on Pending Securities Law Changes**

**June 19, 2007**

**CANADIAN SECURITIES ADMINISTRATORS (CSA)**

**REGISTERED REFORM PROJECT (RRP) / National Instrument 31-103**

To:

British Columbia Securities Commission  
Saskatchewan Financial Services Commission  
Ontario Securities Commission  
New Brunswick Securities Commission  
Nova Scotia Securities Commission  
Registrar of Securities, Northwest Territories  
Registrar of Securities, Nunavut

Alberta Securities Commission  
Manitoba Securities Commission  
Autorite des marches financiers  
Registrar of Securities, PE Island  
Superintendent of Securities, NFLD and L.  
Registrar of Securities, Yukon Territory

**British Columbia Securities Commission**

Attention: Douglas M. Hyndman, Chair  
701 West Georgia Street  
P.O. Box 10142, Pacific Centre  
Vancouver, BC, V7Y 1L2

**Honourable Carole Taylor**

Minister of Finance  
PO Box 9048  
STN PROV GOVT  
Victoria, BC, V8W 9E2

**Alberta Securities Commission**

Attention: William (Bill) S. Rice, Q.C., Chair  
4th Floor, 300 – 5th Avenue SW  
Calgary, AB, T2P 3C4

**Honourable Lyle Oberg**

Minister of Finance  
#408 Legislature Building  
10800 - 97 Avenue  
Edmonton, AB, T5K 2B6

Context:

Investments, such as real estate or securities need to be appropriately regulated, keeping in mind that small and medium sized investors need to be given a freedom of choice, with reasonable costs, where to invest their money. The government does not have to babysit every person's personal choice, but provide a framework in which the market can operate for a long-term win/win relationship. There should be many options besides the public market for monetary investments. More and more private equity firms are taking over large public firms because the public market is overly regulated, too bloated, way too expensive to operate below a certain market cap or trading below value .. and the small and medium sized investor is often left out of this lucrative private equity investment realm.

The current Prospectus and Registration Exemptions **NI 45-106** fills this gap currently quite nicely. The current legislation for non-reporting issuers, NI 45-106 is NOT BROKEN. It provides:

- a) Access to lucrative, professionally managed and often local investment opportunities that the average investor couldn't do by himself or that a very large or public company would not touch, such as small office tower syndication, apartment building co-ownership, land development or medium sized retail centers.
- b) Filing requirements so that the securities commission get an idea of who does what, and can act if someone complains or if they wish to need to know more.
- c) A risk acknowledgement form that is so sharply worded that the innocent investor is scared away "WARNING: This is a risky investment. You could lose all your money."

When did you get this last time you flew an airplane ? "WARNING: You could die in this plane. It could explode in mid-air. It could fly into buildings. It could blow up upon landing." You're OK with this real risk ? Here is your ticket.

Life is risky. Some investments are very risky. Some are plain dull, and still require this warning label just because it is a syndication. The existing legislation is quite adequate !!

- d) A maximum investment (\$10,000) for any, even the dumbest and poorest of all investors
- e) An appropriate minimum net worth or income for larger investments (\$10,000+ up to \$97,000 in AB) for so called "eligible investors" or an appropriate networth or income for very large investments for so called "accredited investors"
- f) Extensive legal language that shows exit points, the business model, all fees, risks, promoters, directors, and investor rights. It is already quite extensive. Sufficient disclosure with appropriate costs for modest investments.

- 1) **Why fix what is not broken ?** The proposed legislation is too centralistic, too expensive and will severely restrict the average investor from participating in the free market. Why should an engineer, who makes \$100,000/year, has a house and a cash or RRSP portfolio of perhaps \$250,000 not be allowed to co-invest perhaps \$50,000 for a 20%+ ROI with a builder, a commercial office tower syndicator or a group of mining executives who wish to explore certain geographies ? People who can invest that kind of money usually do a lot of due diligence before they invest their hard earned money. Freedom of choice is what investors need, not an overly regulated, bloated investment environment with fees for various bureaucrats or brokerage houses, more lawyers, more auditors or insurance companies.
- 2) **Who was consulted ?** ALL industry stakeholders, including investors and non-registered exempt issuers should be consulted. Did you run ads in the Globe and Mail, National Post, all major daily newspapers in all major cities like Montreal, Calgary, Vancouver, Toronto to ask the public for input ? It appears that the proposed legislation limits investors' choice, benefits

regulators and large brokerage firms only, creates more red tape, raises costs, lowers returns and does NOTHING to investors. Why is the investing public not consulted ? Why did you not mail to all 3500 currently operating exempt issuers to ask for their, or their tens of thousands of investors input ? Are you afraid they would write similar letters to this one here ?

- 3) **Better enforcement of existing rules are required !** The existing rules are sufficient — get the few bad boys out – i.e. enforce existing rules, don't create new ones with similar staffing at the various security legislations.
- 4) **Small business are the life blood of the Canadian economy !** They employ over 75% of the employees. This new set of rules benefits a handful of medium to large players (notably brokerage houses who wish to generate more fees !!) and penalizes smaller syndicators, investment groups and the public. Many small and medium sized operators will be forced out of business, hurting the Canadian investment climate and the economy.
- 5) **Allowing small to medium sized companies access to equity (or venture) capital with reasonable cost is the lifeblood of any strong economy.** Stifle entrepreneurs or small companies, on the way to get bigger, too much, and the entire economy suffers, lowering taxes collected, lowering productivity and lowering quality of life for all citizens. Is this the intent of this proposed legislation ? Stifling economic activity across Canada ?
- 6) **Why is Alberta going this way and British Columbia isn't?** British Columbia is considering opting out of the registration requirements as “it is concerned that the registration of persons who are in the business of dealing in the exempt market will have a detrimental impact on the province's venture capital raising business”. B.C. and Alberta have very similar cultures in regards to private equity, so how is it that B.C. does not perceive the need to implement these changes and Alberta does? What are the issues in Alberta that are not in British Columbia?
- 7) **How is buying an investment different than buying a car, a house or a plane ticket ?** There is no requirement to fill out a “know your client” form when partaking in other transactions where you are guaranteed to lose you money or which have risks as well. When someone buys a new car, the second they drive it off of the lot they lose thousands of dollars in depreciation and didn't have to fill out any forms. They were allowed to make their own decision based on their own understanding of their financial status. When you fly an airplane you don't fill out risk acknowledgement forms before you buy a ticket and again before you board. Why is this any different? Under the current regime of offering memorandums, investors are better informed than they are when making any other purchase decision (even that of a new home).
- 8) **Bonding & Audited Financial Statement Requirement:** A number of proposed changes are quite technical in nature, severely increasing costs, but doing little to nothing to protect the investing public. Some of the bonding requirements should only be applied if the securities dealer is actually holding investor cash. If the investor funds go straight into the investment product (generally via a trust account) is there a need for this bonding? This is strictly an aim at adding costs to the brokerage/bonding industry with no benefit. Please show us why this makes sense.

- 9) **Using Ireland, the fastest growing economy in Europe as an example:** Any adult over 21 is deemed there to be capable of making their mind up themselves. The majority invest money they have actually saved and are careful about where and who they invest with. Whereas people with no money are encouraged to borrow for cars, large TVs, furniture etc, products that are guaranteed to fall in value with no warnings whatsoever. Ireland have had little or no regulation in the area of non insurance investments, which has meant more opportunities for anyone willing to invest and more prosperity for the economy at large.
- 10) **The RRP does not improve investment opportunities.** The RRP does not address imperatives of proficiency, solvency and integrity [which are already dealt with by existing regulation]. The RRP is a reaction by large brokerage against the success of NI 45-106 that currently benefits the investor and *is* in the public interest. NI 45-106 – a breath of fresh air – opened the door for buyers to a new array of investments. Very importantly, it also allowed product developers who did not fit into the traditional often cost-prohibitive IPO to access public investment capital through reasonably-priced mechanisms such as the plain-language Offering Memorandum that provides excellent disclosure and protection for the investor.

It is the responsibility of securities regulators to ensure that *all* issuers, including non-registered exempt issuers, are protected from being dominated by a particular interest group, such as large brokerage houses or *registrants*.

The best way to fix something that isn't broken is to leave it alone. **NI 45-106** (Prospectus and Registration Exemptions) is not broken. In fact, it is accomplishing exactly what it was designed to accomplish, and doing so perfectly well. Thanks to NI 45-106 non-registered as well as registered industry participants are able to offer investments to the public – good investments, with excellent disclosure.

Please feel free to call with any questions that you may have !

Yours Sincerely,



Thomas Beyer, President

Prestigious Properties – Group of Companies

#912, 743 Railway Ave.

Canmore, AB T1W 1P2

T: 403-678-3330 F: 403-770-8885

E: [tbeyer@prestprop.com](mailto:tbeyer@prestprop.com) W: [www.prestprop.com](http://www.prestprop.com)