

June 20, 2007

Alberta Securities Commission  
British Columbia Securities Commission  
Manitoba Securities Commission  
New Brunswick Securities Commission  
Nova Scotia Securities Commission  
Registrar of Securities, Northwest Territories  
Registrar of Securities, Nunavut  
Registrar of Securities, Yukon Territory  
Saskatchewan Financial Services Commission  
Securities Commission of Newfoundland and Labrador  
Securities Office, Prince Edward Island

c/o Mr. John Stevenson, Secretary  
Ontario Securities Commission  
20 Queen Street West  
Suite 1903, Box 55  
Toronto, Ontario, M5H 3S8

And/et

Madame Anne-Marie Beaudoin  
Directrice du secrétariat  
Autorité des marchés financiers  
800, square Victoria, 22e étage  
C.P. 246, Tour de la Bourse  
Montréal, Quebec H4Z 1G3

Subject: Proposed NI 31-103, Registration Requirements

Mr. Stevenson and Madame Beaudoin:

The Canadian Listed Company Association (CLCA) is pleased to provide comments on the Proposed NI 31-103, Registration Requirements. . The Canadian Listed Company Association represents the viewpoint of public Listed Companies ("Issuers") and conducts education and advocacy programs on their behalf.

Our past comment letters and newsletters can be found on our website [www.lcaca.com](http://www.lcaca.com).

### **General Comments**

Our comments and opinions tend to focus on the following areas:

1. Harmonization must preserve the parts of the securities market that are proven and working well. The challenge is to coordinate and standardize, yet allow for the tremendous difference in size and industries that characterize our markets.

2. One of the key economic advantages to doing business in Canada is the access to a speculative pool of capital at relatively low cost by venture issuers. This access is made possible by our unique venture class regulations in an appropriately regulated market place. In fact the vast majority of Issuers in Canada are venture Issuers it is not just a western phenomenon. (Refer to TSX Exchange market capital stats by region and industry and Alberta Capital Markets Report 2007 excerpts in appendix attached to this letter).

3. We have been pleased at the movement toward harmonizing prospectus and registration exemptions. These exemptions are extremely important for the health of Canada's capital raising system as evidenced by the fact well over 80% of funds raised by venture issuers are through these exemptions.

The Canadian Listed Company Association is concerned the proposal to move entirely to a business trigger for registration has overlooked key attributes of the structure and functioning of Canada's capital markets.

The Alberta Capital markets 2007 Study shows the distribution of Canada's public companies are highly skewed with a large number of small companies. For convenience we attach 2 key summary graphs from that study as appendix 1 to this letter. In addition, the distribution of companies by size is highly correlated to industry and province.

The graphs in Appendix 1 are quite striking and significant in that they show it is fair to conclude that rules and policies developed from the perspective of one industry or one particular provincial bias, will not be appropriate for the structure of the market in other industries and provinces.

Venture class companies in Canada make up the majority of public companies and have used the current exemption regime for decades consistently to raise 80 to 90 percent of the funds raised by Venture companies. We believe that the proposal to eliminate the registration exemption for securities exempt from prospectus exemptions is made with little or no recognition of the vast venture company class of companies in Canada dependant and made successful on this exemption without the use of registrants.

The proposal is not specific and the definition of being "in the business" doesn't appear to be any clearer, more understandable, or any improvement on the definition of "an act in furtherance of a trade". No particular abuse or problem has been cited and no mention of the significant contribution of this exemption to capital raising and economic development in

Canada. The requirement to register can be interpreted to capture a wide range of activity, such as investor relations and occasional finders' fees earned by consultants. This could result in the overburden of regulatory resources to implement, confusion on legal closings and an increase in the cost of capital. However, no benefit has been identified in the proposal that warrants the additional cost to issuers and the added regulatory burden.

We will limit our specific responses to the proposal to eliminate registration exemptions where prospectus exemptions are available.

Unfortunately we do not believe that the majority of the items outlined in NI 31-103 will assist investors or market participants in meeting the stated goals of assuring proficiency, solvency and concise record keeping. Instead, these proposed rules, create more ambiguities for current and potential registrants. As we comment below, administering courses on products and procedures that are irrelevant to the activities of the targeted "registrant " and requiring solvency tests where no funds are handled or deposits held, are prime examples of applying inappropriate standards that are based on a retail investment advisor as a model for which the Canadian Securities Course was designed.

We believe that the key benefits to the proposed system in NI31-103 are the requirement to register with only one jurisdiction and hence one regulator, and the simplification of the number of registrant categories.

The Notice that accompanies the Instrument suggests the CSA is considering continuing the inclusion of the concept of "an act in furtherance of" a registerable activity in the new statutory regime. We would recommend that be adopted as the prospectus exemption regime and accompanying registration exemption has been in place for decades. It works well, is easily understood as a logical pairing of exemptions and is the mechanism by which as much as 90% of the funds raised in Canada for venture issuers are raised.

### **Registration and competence requirements:**

We are opposed to the proposal to require the Canadian Securities Course as a proficiency requirement for persons dealing in prospectus exempt securities. Prospectus exempt securities are only purchased because of the purchasers' unique relationship to the issuer, or the issuers' principals, or the ability of the buyer to use their discretion and knowledge to make an affordable investment as they are qualified by a wealth or income test. It is irrelevant to take a course on advising generally on wealth management, investment products and securities analysis if the purchaser doesn't need a prospectus and the investment is only allowed in limited circumstances.

### **Specific Comments**

Our specific comments relate to each of the questions posted by the CSA as follows as well as items that are of specific interest.

## **Questions Posed by CSA**

### Exempt Market Dealers

Question #1: What issues or concerns, if any, would your firm have with the proposed fit and proper and conduct requirements for exempt market dealers? Please explain and provide examples where appropriate.

The content of the Canadian Securities Course is irrelevant to the persons that tend to deal in prospectus exempt securities. The course is based on a retail investment advisor model counseling people with regard to a portfolio of liquid and diversified investments. In the case of persons involved in selling prospectus exempt securities we advise there is no prospectus exemption for reliance on an advisor and accordingly the decision to invest is not made with regard to the level of education or training of the person introducing the investment. We suggest though, that any prospectus exempt sale of a stock exchange listed security not require a registrant because the shares are traded in an open and efficient market through registrants that are members of the IDA. Requiring a double layer of registration is unnecessary: one for a treasury issuance by exempt private placement and a second for the trade through a registrant on a recognized stock exchange.

Question #2: The British Columbia Securities Commission seeks comments on the relative costs and benefits in British Columbia of harmonizing with the other CSA jurisdictions to create an exempt market dealer category and in doing so, eliminating the registration exemptions for capital-raising transactions and the sale of those securities, referred to in some jurisdictions as "safe securities" (i.e. government guaranteed debt).

Please refer to our opening comments and the graphs in the appendix and it is apparent the BCSC is pointing out the rule proposed will have a substantial negative impact on venture Exchange financing. As we also stated above, the additional burden of broadening the requirement for registration where the securities are prospectus exempt, and largely listed on a recognized exchange, is redundant and excessive. The proficiency, capital and record keeping requirements are also largely irrelevant and inappropriate for specialized prospectus exempt investments.

### Financial Institution Bonds

Question #8: The Rule requires dealers, advisers and fund managers to have Financial Institution Bonds. In cases where the owners of the firm also carry out the operations and registerable activity of the firm, usually in small firms, are these bonds prohibitively costly to obtain and will the bonds provide coverage if they are obtained in these situations?

In the case where prospectus exempt securities dealers do not, take custody of the client's funds or assets (with the exception of the payment of commission fees) we believe that there is little solvency risk to the investing

public and accordingly believe that the capital and insurance requirements are not needed.

#### Exemptions from Registration

Question #14: One objective of NI 45-106 Prospectus and Registration Exemptions was to have all exemptions in one instrument. As mentioned, we have included the registration exemptions in the Rule for purposes of obtaining comments on the exemptions that are being proposed under a business trigger. Would you prefer the registration exemptions remain in NI 45-106 or be moved into the Rule?

We are very concerned about uncoupling the registration exemption from NI 45-106. There is general lack of awareness of the proposal to eliminate registration exemption from this instrument because of the decision not to publish a change to NI 45-106 along with this registration instrument. The majority of Canada's public Issuers are negatively affected by this proposal but few know about it because it is positioned only in the registration instrument.

#### Summary

We hope the CSA will take our comments into consideration and review the proposal for NI 31-103. These proposed new rules will have a significant impact on Venture Issuers and the cost of capital in Canada.

Thank you for the opportunity to comment on your proposal.

Sincerely,



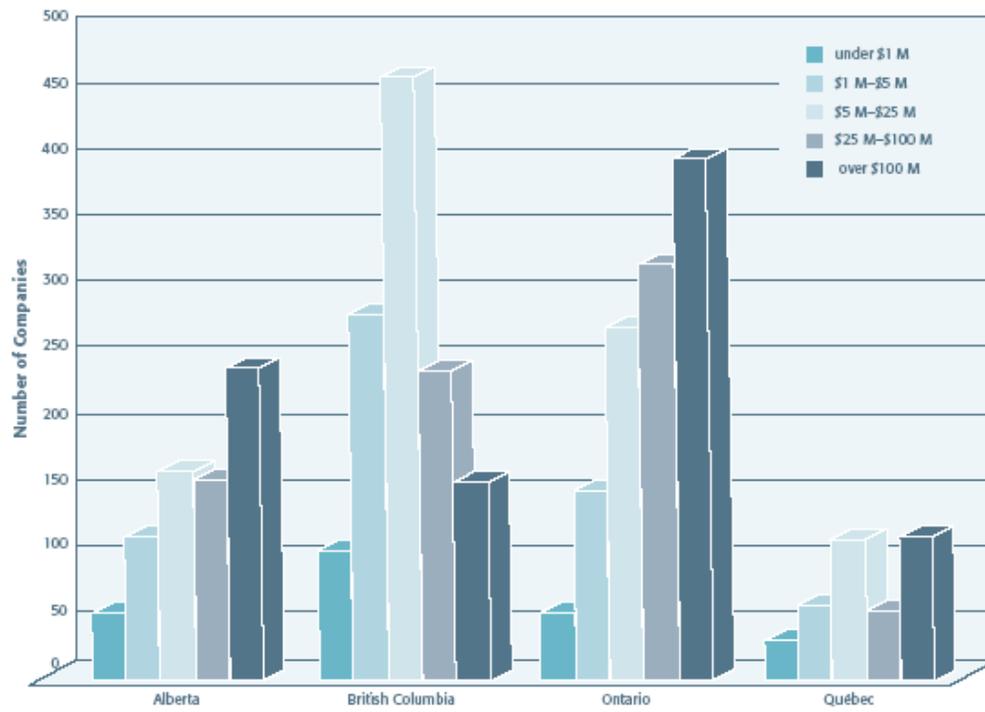
D. Bruce McLeod, P.Eng.  
President & Director

"Donald A. Gordon"

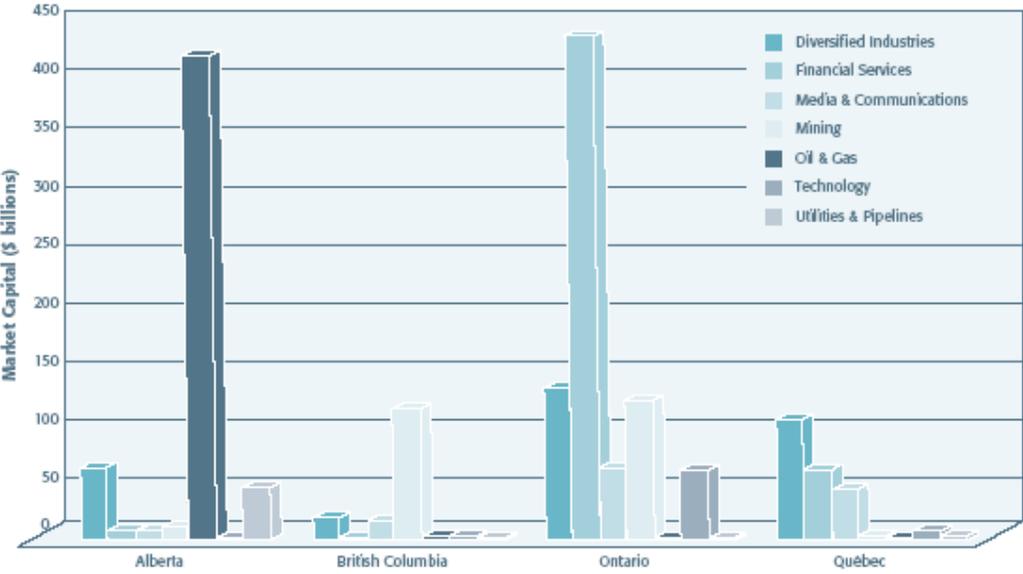
Donald A. Gordon, MBA, CFA  
Executive Director

## Appendix 1

**Chart 7 Distribution of Companies by Province and Market Capital**



**Chart 9 Distribution of Market Capital by Industry and Province**



The graphs show there is three major groupings of companies in Canada by industry, and also happen to exist in separate provinces; financial services in Ontario, Oil & Gas in Alberta and Mining in BC. The former two tend to have a much higher market cap than the mining companies.