



# KMC Capital Inc.

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June 20, 2007

John Stevenson  
Secretary  
Ontario Securities Commission  
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Via e-mail: [jstevenson@osc.gov.on.ca](mailto:jstevenson@osc.gov.on.ca)

British Columbia Securities Commission  
Alberta Securities Commission  
Saskatchewan Financial Services Commission  
Manitoba Securities Commission  
Ontario Securities Commission  
Autorité des marchés financiers  
New Brunswick Securities Commission  
Registrar of Securities, Prince Edward Island  
Nova Scotia Securities Commission  
Superintendent of Securities, Newfoundland and Labrador  
Registrar of Securities, Northwest Territories  
Registrar of Securities, Yukon Territory  
Registrar of Securities, Nunavut

**RE: RESPONSE TO REQUEST FOR COMMENTS – REGISTRATION REFORM PROJECT (“RRP”) /  
PROPOSED NATIONAL INSTRUMENT 31-103 (“31-103”)**

Thank you for providing me with a forum to express the concerns that I have over proposed National Instrument 31-103.

While there is undoubtedly improvements that can be made to the existing securities regime in Canada, it is apparent to myself and many others that many of the changes being contemplated by 31-103 are inappropriate in regards to the those involved in the exempt market.

From viewing the Ontario Securities Commission website and the associated “Comments Received” section many of my concerns have already been addressed by other parties. As such the focus of my letter is simply in regards to the differences between those in the exempt world and those in the world of registrants and how they should not be painted with the same brush and subject to essentially the same rules, requirements, and regulations.

### **“Education” Requirements: Advising vs. Selling**

What has probably been perceived as the most peculiar requirement proposed by 31-103 is that those selling exempt securities will need to take and pass the Canadian Securities Course (“CSC”). What makes this requirement so peculiar is the lack of relevance the course has to those in the exempt market world. The CSC is a course designed for those individuals who intend on providing investment advice, not for those offering a single product. **Those in the exempt world do not want to provide investment advice and as such shouldn’t be required to take a course that is entirely about that.** While the idea of additional education is a great one, there is not a blanket solution for this perceived “problem”. The exempt market has multiple products available to investors that are as different as night and day (oil & gas, mining, real estate, technology, etc.) and as such the educational requirements necessary to offer a given investment product cannot possibly be captured under the same umbrella (unless they want the CSC to be 2000 pages long!). Realistically, the educational requirements of the sales representative need to be specific to the product being offered. For example, a vast majority of the funds raised in the exempt market in Alberta are surrounding real estate. Wouldn’t it make more sense for the sales representative to take a real estate course (as that’s what he/she is really offering) rather than a course focused on mutual funds/public company stocks/etc.? There is a difference between selling one specific product that you represent (i.e. commercial real estate syndications) and advising on a wide variety of products offered by multiple entities. **Selling versus advising....the difference is clear!!!**

### **“Know” Your Client Forms (“KYC”)**

It is also proposed that investment sales reps will now be required to have investors fill out KYC forms each time they make an investment. How does this proposal make any sense? Frankly, the sales rep does not want to Know [Their] Client and the client doesn’t really want to know the agent. **It is a buyer/seller relationship only.** As you all know, a KYC also requires an annual update to re-asses the individual investor’s risk tolerance and amend their portfolio accordingly. If an investor is purchasing an exempt security that is essentially not tradable and typically non-redeemable, what does a KYC matter? If their financial status changes, the investor cannot get out of the investment anyhow so this form is irrelevant. There is also a huge conflict of interest and contradiction here in that the purchaser has to fill out a KYC for the sales rep (so that theoretically the sales rep can determine the suitability of the investment) and in the same visit, the purchaser has to sign a risk acknowledgment form that indicates the purchaser’s understanding that the sales rep doesn’t know or care about the suitability of the investment. Effectively the two forms are together saying **“the person that asked me to paint my total financial picture for them to see if this investment is suitable for me now has no duty to tell me if this investment is suitable for me.”** **HOW DOES THIS PROPOSAL MAKE ANY SENSE?** The answer is simple, it doesn’t.

### **Free Working Capital/Bonding/Audited Financial Statements**

These requirements should only be applied if the company in question is actually holding investor cash. In 95% of the cases involving exempt issuers, the investor funds go straight into the investment product (generally via a trust account) so why is there a need for this?

The issuer of a given investment is the one who ends up getting sued in the event of a lawsuit, not the promoter so why should the promoter need to hold a bond/working capital? **Promoters in the Exempt Market Don't Hold Any Investor Cash** so why should they be subject to the same requirements as those that do?

There is a clear distinction between the situation where the investor simply buys a product and the situation where the investor opens an account with a registered dealer and pays a fee for investment advisory and/or brokerage services.

If the ultimate goal of the RRP is truly to create harmonization for the regulators and a "level playing field" for all those that sell investments (as has been suggested as being a desired outcome of existing registrants), it is clear that the pendulum needs to swing both ways. While undoubtedly there should be some additional requirements placed on those in the exempt world, there should be some additional "hoops" that those in the registrant world are required to go through before they can sign up an investor for a given investment too. This needs to be a two way street. When was the last time a registrant had to get a form as scary as a risk acknowledgement signed before they could earn their commission? Perhaps those in the world of registrants should have some additional requirements placed on them too...

While I am all for fair play as are my counterparts in the exempt industry, it surely has to be recognized by those steering the RRP that there is a difference between a level playing field and the same playing field. It should be obvious after reading the multiple letters you've received that the world of exempt securities and the world of registrants is very different. While countless hours have obviously been put into drafting 31-103, it is quite clear that those drafting it have missed some key points in regards to the world of prospectus exempt securities. The current system provided by NI 45-106 is already meeting the needs of investors and business perfectly as it provides a clear distinction between sales people and advisors. I sincerely hope that at the very least you take the comments received from all parties very seriously and make the appropriate changes for the next draft of the proposed legislation.

Thank you for your attention to the above.

Sincerely,



Craig Skauge