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May 16, 2008

Mr. John Stevenson
Secretary
Ontario Securities Commission
Via E-mail

The Honorable Iris Evans
Minister of Finance, Province of Alberta
Via E-mail

Re: Proposed National Instrument 31 -103 / Registration Reform Project

I would like to thank the Canadian Securities Administrators for the opportunity to once again comment on the proposed National Instrument 31-103/Registration Reform Project, in particular how it relates to the exempt market. I, along with my colleagues, competitors, and advisors am hopeful that the Canadian Securities Administrators will give the new round of comments the appropriate consideration, make some necessary ammendments to the proposals, and release a much needed third draft for discussion, or better yet realize the proposed changes are misguided and cancel them in their entirety.

While the Canadian Securities Administrators, in particular, the Alberta Securities Commission, should be applauded for some of the recent revisions to National Instrument 31-103, there are still a number of items that need addressing prior to the Registration Reform Project moving forward.

Although the definition of handling clients' cash needs to be re-visited (in the exempt market typically only the issuer or law firm actually handles the cash) the Canadian Securities Administrators clearly gave certain previous items of contention the appropriate consideration as the idea of bonding and audited financials (from dealers) seems to have been taken off the table for the most part.

It is the writer's hope that the Canadian Securities Administrators will give the same consideration to the two primary items of contention that remain on the table, the implementation of Know Your Client forms and the requirement of those selling exempt market securities to take the Canadian Securities Course. While the underlying goal of these two proposals (better investor protection) is to be commended, the proposals themselves are not compatible within the exempt market.

At a recent consultation session held in Calgary, Alberta Securities Commission staff agreed with the author that there was an inherent conflict in implementing Know Your Client forms in the exempt market and that the Canadian Securities Course was not an ideal course for the exempt

market industry. Having said that, Alberta Securities Commission staff seemed to take the position that the Canadian Securities Course and Know Your Client forms were essentially the best that the Canadian Securities Administrators could come up with to reduce the number of investors being “preyed upon.” The following letter will illustrate why these two (and a few other) ideas are unfounded, conflicted, and should not be implemented.

Know Your Client (“Know Your Client”) Forms / Risk Acknowledgement Forms

By the definition afforded by the offering memorandum exemption pursuant to National Instrument 45-106, all exempt “market” securities are categorized as being high risk. Despite the fact that the contrary is often true, those that invest in exempt securities by way of offering memorandum are required to sign a form acknowledging that they could lose all their money. This, in conjunction with the Canadian Securities Administrator’s proposal to implement Know Your Client forms, leads to a huge problem for all those who sell exempt market securities. If an investor indicates that their risk tolerance is anything less than high, they theoretically should not be able to invest in ANY exempt security.

The fact of the matter is that many exempt securities are safer than marketable securities and in many cases, investors are forced to make a misrepresentation themselves by signing a form acknowledging that they could lose all of their money, even though that isn’t the case. When was the last time land was worth NOTHING?

Despite the fact that multiple sound arguments have been made indicating that Know Your Client forms make absolutely no sense relative to exempt market securities, the Canadian Securities Administrators seem to be determined to implement this proposal. If this ends up materializing, I don’t see how the Canadian Securities Administrators have any choice but to re-visit the categorization of exempt market securities as all being high risk. Are the Canadian Securities Administrators prepared to review and categorize each individual exempt market security? If not, this idea must be thrown out.

Another problem with Know Your Client forms is that they need to be renewed on an annual basis. Despite the fact that the Canadian Securities Administrators have defined the investments in question as being exempt “market” securities, the fact of the matter is that there is effectively no “market” for these securities at all. With that, a Know Your Client form again is not compatible. If a client’s financial situation or risk tolerance changes in a 365 day period, they cannot simply sell their exempt securities on the market and move into something “safer,” so why bother with this form in the exempt market? Know Your Client forms are clearly tailored to financial advisors that want to know their “client” and have the ability to alter investment portfolios as their clients’ needs change. They are by no means a form compatible in the exempt market as “clients” don’t exist, only purchasers do. The Canadian Securities Administrators need to understand the difference between the two and take the appropriate action in aborting this idea.

Fixing the “Problems” within the Exempt Market with Additional Regulation

The Alberta Securities Commission mentioned the significant amount of unscrupulous activity that is present in the exempt market, yet could provide no statistics despite countless requests.

No matter how many rules are put in place, it is unfortunate to say that some investors will inevitably fall victim to the few unscrupulous promoters in the industry. Having said that, if the Alberta Securities Commission were to provide the statistics we’ve continuously asked for, I suspect that the problems within the exempt market relate to less than 1% of the capital raised.

National Instrument 45-106 even covers this small percentage in that those victims that are “preyed upon” have the right to sue for misrepresentations (for up to three years!) as is provided for by the offering memorandum. So in essence, 99% of investors don’t have problems and the 1% that do have recourse. It seems to me that the Canadian Securities Administrators are trying to fix something that is clearly not broken.

The pendulum of regulation has swung far enough and the current regime is serving investors well. There is no problem and therefore no solution (i.e. additional regulation) is required. Adding additional regulation will only increase the costs of raising capital (which are always passed on to investors) and will not increase investor safety. In fact, investor safety may be compromised if some of the proposals are implemented as you’ll essentially be “legitimizing” everyone, even the crooks.

The simple fact of the matter is that those who attended the meetings held by the Alberta Securities Commission are willing to follow whatever regulations are placed on them (after all that’s why we were there). Creating more complex and harder to follow regulations will not increase investor protection as those that don’t follow the current rules (and didn’t attend the consultation sessions) won’t follow the new ones either.

Canadian Securities Course (“Canadian Securities Course”)

Education is always a good thing and should be a requirement in any industry but the Canadian Securities Course is irrelevant to the exempt market industry. If the Canadian Securities Administrators are set on having an educational benchmark for the exempt market to meet, they need to draft something applicable, as the Canadian Securities Course is not it.

I know it has been said before but it needs to be said again, of its hundreds of pages, the Canadian Securities Course has four pages relative to real estate. Most exempt market securities (probably 90% in Alberta) are tied into real estate so how is the Canadian Securities Course going to help anyone?

The Canadian Securities Administrators need to establish a new steering committee to oversee the drafting of a course applicable to those that want to deal in exempt market securities and I for one would be happy to assist in the process.

Conclusion

It is the author’s opinion that new regulations need to have solid reasoning behind their implementation (more than “it’s the best we’ve got” to deal with the problems we can’t specifically show you) and the same has not yet been provided to the exempt market.

The investing public is being served extremely well by the current offering memorandum regime provided by National Instrument 45-106. Those investing in the exempt market are receiving more diversified investment opportunities, disclosure, and risk warnings than they ever have before and the billions of dollars being raised should be embraced and treated as a huge success, rather than classified as a problem needing more regulation. The volume of dollars being handled in the exempt market is only a problem for those losing access to the money, the Mutual Fund Dealers Association and Investment Dealers Association, who not surprisingly are the ones predominantly steering the Registration Reform Project. These individuals have no business (or required knowledge) to suggest how the exempt market should be regulated. The suggestion of requiring exempt market salespersons to take the Canadian Securities Course and have exempt market investors fill out Know Your Client forms are a clear example of this. The Canadian Securities Administrators

should in turn create an exempt market committee (made up of exempt market participants) to come up with ideas as to how to better govern this industry....OUR industry.

I strongly urge the Canadian Securities Administrators (in particular the Alberta Securities Commission) to re-visit the idea of implementing the Registration Reform Project as it will ultimately harm this country's capital markets and do little more than play into the Mutual Fund Dealers Association and Investment Dealers Association's hands.

If the other jurisdictions (aside from British Columbia who has backed out – Bravo!) are set on going forth and following the Registration Reform Project, so be it, but Alberta is different and should act accordingly.

While I can't comment on what's happened elsewhere, those in the exempt market industry in Alberta have expressed staunch opposition to the Registration Reform Project and as such it should be scrapped in this Province on that basis alone.

The PowerPoint shown at the recent Alberta Securities Commission meeting indicated that approximately 96% (116/121) of letters in reference to proposed changes in the exempt market (discounting the 374 Know Your Client opposition letters that were sent in on time yet ignored by the OSC) were in opposition to one or more of the proposed registration requirements, yet little has changed. Albertans came out in droves to the recent Alberta consultation sessions (more than the Alberta Securities Commission had room for – even with adding an extra session) and it is now up to the Canadian Securities Administrators, the Alberta Securities Commission in particular, to show that they were listening and are in place to serve the interests of the public, not just the Mutual Fund Dealers Association and Investment Dealers Association. The message is clear, the exempt market participants and exempt market investors don't like what you're doing. As a government body here to serve the investing public, the Canadian Securities Administrators, and again Alberta Securities Commission in particular, need to listen to the people and either re-visit the "drawing board" or realize they've made a mistake with the proposals and re-focus their attention to further enforcing the existing rules provided by National Instrument 45-106.

Sincerely,

A handwritten signature in black ink, appearing to read 'Craig Skauge', written in a cursive style.

Craig Skauge
President