

Re: Comments on Pending Securities Law Changes
CANADIAN SECURITIES ADMINISTRATORS (CSA)
REGISTERED REFORM PROJECT (RRP) / National Instrument 31-103

To: John Stevenson (jstevenson@osc.gov.on.ca) May 19, 2008
Ontario Security Commission

And to:

Alberta Securities Commission

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

Honourable Iris Evans

(sherwood.park@assembly.ab.ca)

Minister of Finance

10800 - 97 Avenue

Edmonton, AB, T5K 2B6

John:

Further to my letter dated June 19, 2007 I wish to specifically comment again on the proposed changes for NI 31-103, based on a review by ASC staff with various interested parties on April 22, 2008 at the ASC boardroom in Calgary, AB.

Let me state on a general level, that investments, such as mortgages, 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 and with reasonable oversight - where to invest their money. More specifically there are nine areas I wish to give feedback on - as both a frequent and multiple investor in many of these private (market-exempt) funds but also as an operator of an apartment building syndication group operating under current market exempt legislation.

FEEDBACK 1 – Freedom of Choice: The government does not have to babysit every adult'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, including 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.

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. Perhaps you should not have bought that car on credit ? Perhaps a smaller car would be better for your current financial status. They were allowed to make their own decision based on their own understanding of their financial status and desires. 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 usually much better informed than they are when making any other purchase decision (even that of a new home which usually has a much higher \$ commitment).

Why should an engineer, for example, 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. .. especially if it adds no reduction in risk and in fact just lowers their returns !

btw, in Canada we the Canadian Charter of Rights AND FREEDOM (emphasis mine) .. and not the Charter of Rights AND REGULATIONS !!

FEEDBACK 2 – Bloated regulations block investments More and more private equity firms, pension funds or sovereign funds are taking over large public firms (latest example: BCE, one of Canada's largest 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. In addition, more and more capital is invested outside of North-America due to excessive regulations here (and the US). Capital can move freely, between provinces and internationally, and a reasonable balance between oversight and freedom has to be struck.

FEEDBACK 3 – Why fix what is not broken: The current Prospectus and Registration Exemptions **NI 45-106** fills this gap between small scale joint-venture and a public firm quite nicely. The current legislation for non-reporting issuers, **NI 45-106 is NOT BROKEN.** It provides:

- a) 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.
- b) 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. Enjoy your flight.

Life is risky. Some investments are very risky. Some are plain dull, and still require this warning label just because it is a syndication. Buying an apartment building, for example, and holding it for 5 years is far less risky than buying Google shares, call options or publicly traded mining stocks. Nevertheless, our investment is labelled “risky” and require additional signatures whereas buying Google shares, options or publicly traded mining stocks do not. The existing legislation is quite adequate !!

- c) A maximum investment (\$10,000) for any, even the least informed and poorest of all investors

- d) 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”.
 - e) Extensive legal language that shows exit points, the business model, all fees, risks, promoters, directors, and investor rights. It is already quite extensive and provides sufficient disclosure with appropriate costs for modest investments.
- **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.

FEEDBACK 4 -The proposed regulation does not lower investment risk. 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. The newly proposed regulation does nothing to lower risk.

FEEDBACK 5 – Consult Investors (not just Bay Street lawyers, regulators, fund managers or public stock promoters) ALL industry stakeholders, including or especially current market exempt 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 or might even lure them into a false sense of security. 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 ?

Why were 374 investor comments to CSA not publicly acknowledged and published as with most other letters ? Why did ASC staff not even mention these additional 374 written responses (against the proposed changes) from June 2007 in the consulting sessions in April 2008 ? Was this a deliberate attempt to suppress investor comments ?

FEEDBACK 6 - Small businesses are the life blood of the Canadian economy ! They employ over 75% of the employees in this country. 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 average Canadian investor. Many small and medium sized operators will be forced out of business, hurting the Canadian investment climate and the economy.

- 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 ?

- 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*.
- Should Alberta or B.C. follow Ontario's lead here ? The current Ontario exemption requirements, essentially allowing only accredited investors, are way too onerous as the aforementioned high income, very smart engineer in Ontario, for example, could not invest in most of the current exempt offerings. Is this what we want ? Ontario's socialistically inspired government or quasi government agencies driving Canada's economy ?
- A national regulator is not in Alberta's or BC's best interest ! It will deny Alberta its ability to regulate its own capital market. Alberta needs to retain a degree of independence that will be lost if the national instrument is enacted !

FEEDBACK 7 - 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?

FEEDBACK 8 – Learn from other fast growing countries, such as Ireland: Ireland is the fastest growing economy in Europe: 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 has 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.

FEEDBACK 9 – Know Your Client / Risk Perception: like any provider of a product or a service it is paramount that the vendor understands what the client needs or wants. Why is it relevant to fill out a detailed "Know Your Client" form that details personal assets if the person wishes to invest \$50,000 ? Who decides what is "risky" .. or if this "risky" investment fits the investor's profile or not? It is risky to fly an airplane – or driving a car - from Vancouver to Calgary. Should we therefore allow only donkeys or pedestrians on highway 1 ? Once the client is informed of investment timelines, real risk levels and potential returns compared to other classes of investments ..let them make up their own mind if this fits their portfolio or not. Let's take two views: mine as a syndicator and mine as an investor, as I am both:

- a) We as a syndicator are not pretending to be advisor that can advise on the entire universe of potential investments, but rather as experts in a specific field. We do not pretend to be advisors .. nor do clients expect it.
- b) As an investor I expect the vendor to tell me the pro's and con's of their investment model, compared to similar investments .. and then I as an investor can judge if this offering fits my situation of risks, profit expectations and timelines.

- When will you open the Canadian Risk Assessment Agency, that grade every stock, bond, mutual fund, ETF, mortgage, private investment every day for risk and allows or dis-allows on a regular basis what is high risk, what is medium risk, what is low risk and what is no risk ?

Hence, my final thoughts: Have you lived in East-Germany ? Have you lived in the former Soviet Union ? Did you live in North-Korea ? Cuba ? The state mingles in every aspect of society .. and guess what: it sucks the life blood out of people, investors, entrepreneurs and the entire society at large ! We need more choice, less regulations with better frameworks to allow entrepreneurs and people with capital to invest to freely meet, exchange ideas, exchange capital and then propel a society forward .. to benefit investors, operators and the less able / less fortunate. NI 31-103 is a giant step in the wrong direction even for the less able / less fortunate !!!

- NI 31-103: A small step for (a regulator) man.. a giant leap (backwards) for mankind !

Ontario should learn from BC and Alberta ! Not the other way around ! The highest growth in Canada is in BC and Alberta, and a key reason for this is a more entrepreneurial, less regulated, more liberal capital market ! Let's keep it this way .. and perhaps reduce Ontario's investment requirements and dependence on government handouts and regulations !

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 or e-mail with any questions that you may have !

Yours Sincerely,



Thomas Beyer, President
Prestigious Properties Group
#912, 743 Railway Ave.
Canmore, AB T1W 1P2
T: 403-678-3330 F: 403-770-8885

E: tbeyer@prestprop.com W: www.prestprop.com