

PROFORMA CAPITAL INC

Succession, Estate & Financial Strategies



Faxed and emailed to:

John Stevenson
Secretary
Ontario Securities Commission

The Honorable Iris Evans
Minister of Finance
Province of Alberta

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

I would like to thank the Canadian Securities Administrators and the Alberta Securities Commission for some of the recent changes it has made to National Instrument 31-103. Upon review there are some topics under consideration that I would like to comment on.

Understanding the exempt marketplace is essential to coming up with a way in which we can set up a fair and equitable system of compliance and investor protection. There is so much good, that comes from having a capital market that truly fosters innovation and creativity to responsibly draw upon investment capital while at the same time delivering promises to investors. There are so very many differences from the Exempt Market and the non-exempt market which requires multi level accountability due to the liquidity and size of that marketplace.

When we have regulators and competing interest groups driving together on the legislative band wagon one has to wonder the true purpose and mandate of such a group. Because of the vast differences between the exempt and non-exempt marketplace it seems irresponsible for such merit to be placed on the desires of the Mutual Fund Dealers Association (MFDA) and the Investment Dealers Association (IDA) who seem to be driving the bus powered by the Canadian Securities Administrators and now the Alberta Securities Commission (who seem to be continually pushed hard by the Ontario Securities Commission (OSC)). This letter is not to insult the very good works by any of these organizations but to clearly articulate what is a seemingly skewed agenda.

Over the past few years the Exempt Market has grown considerably. It has helped fuel the economy especially in British Columbia and Alberta. Recognizing the potential for some profit participation and ultimately control has probably driven some of the agenda for the MFDA and the IDA as rules clearly outline that members cannot participate on an active basis unless they have gone through due process at either the MFDA or IDA level respectively. That process is onerous, slow and very reactive rather than proactive. The goal is to deliver on promises to investors not cripple a market that exists to provide ready capital from investors who are hungry for better returns, higher income and many times that have underlying assets that would safely protect the investors capital even more so than the non-exempt marketplace.

Unscrupulous behavior happens whether you have much legislation and compliance (see activities on Bay Street and Wall Street...Nortel, Bre-x, World Com, Enron, Asset Backed Commercial Paper & Subprime fiascos to name a few examples and billions of dollars that has disappeared for investors) or if it is a handshake deal that went south. We cannot legislate good behavior, ethics, honesty and integrity. We can find a common ground that will work for those participating, investing, raising capital or setting boundaries within the exempt market. We need the Canadian Securities Administrators and the Alberta Securities Commission to include some of the key players (large and small) in the Exempt industry to participate in a process that is facilitated by an unbiased outside body or individuals to build a constructive and cohesive, functional environment with policies and procedures that make sense. The current Town Hall meeting approach is a band aid at best and still fosters feelings of contempt and ill will without building a solid approach that will give appropriate solutions and answer all participants concerns.

Some financial planning firms that utilize the exempt market take an advisory role when they are working with investors. They have a vetting process with in house CFA Charter holders who are trained to drill down and get the answers needed to help determine the viability of the promises made to investors of the exempt investments they are analyzing. They are the rarity in this marketplace. In most Exempt Market situations, the goal is to raise capital with some promise of return of the investment and return on the investment so you have sales people selling product to investors. The goal is to raise capital responsibly and at a lower cost than the traditional routes. This is why we have the Risk Acknowledgement within the OM that a client needs to sign. We do need some form of education and accountability for the Exempt Marketplace. The Canadian Securities Course is not the answer. It really does not prepare or educate someone adequately to convey the knowledge needed to truly be effective. Some Exempt Market firms are now taking the approach that they need to adequately train representative sales people (who are likely to be independent agents) in compliance issues and education for their particular marketplace. Walton International is an example of a company who is serious about this, where someone cannot sell their product unless they have gone through rigorous compliance training.

It is important that we carefully move into this area. Many good people who do not have access to a vetting process or have not had compliance training but are knowledgeable, honest and have integrity rely on the Exempt Market to earn a living for themselves and their families. It does not make sense to just throw an education hurdle at them when there is no clear benefit to the investor, sales person or company raising the capital. I agree something needs to be done but we need to set appropriate guidelines that would not adversely affect the participating parties. It would be more prudent to continue on the proactive path of working together to create what is needed to make this all work. Many of the issues we are discussing are of course reactive but we need not keep walking down that path.

As British Columbia and Alberta are leaders in the Exempt Market it would seem that much representation for such a committee should come from these provinces. In fact the trend for each province to provide its own guidelines is more palatable than having investment guidelines drawn, legislated and directed by the Ontario Securities Commission (OSC). The agendas of the OSC and Exempt markets are vastly different and many times opposed. Mountains of red tape, legislation, and over policing are more for countries who aspire to something other than the Democratic process.

I would recommend that we continue to operate under the existing rules of National Instrument 45-106 until we can come up with a viable solution. Let's recognize that we need to work at making the existing structure better without disrupting what has to date been a viable and workable process that has provided much more good than bad. As mentioned above, it would be more appropriate to assemble a committee that truly represented the Exempt Market to build systems, procedures, training and compliance that meets the needs of the investor, the sales person, the advisor, and the companies who are raising the capital.

Thank you for your consideration.

Sincerely,

Robert J. Frost CFP, CLU, CHFC, TEP
President & CEO
PROFORMA CAPITAL INC.