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Dear Sirs:

Re: CSA Registration Reform Project
Proposed Rule 31-103

We are a law firm which has many clients who participate in raising capital through exempt transactions in the Province of Alberta. We wish to comment on the proposed National Instrument 31-103 in view of our experience in dealing with transactions in raising exempt capital.

In summary, we believe that in its current form, the proposed National Instrument would substantially eliminate access to exempt capital, and therefore the ability to raise capital, for a large number of private issuers. It is possible, however, that a few relatively minor changes to the proposal would allow it to achieve its intended purpose without having this undesirable side effect. A more complete discussion of the reasoning behind these conclusions follows.

Background

Many different intermediaries operate in the exempt market. They range from financial planners to independent individuals dealing with exempt offerings from time to time to full time employees of exempt issuers or affiliates of exempt issuers.

Rules which restrict any of these groups of persons from participating in exempt offerings, and being compensated for their participation, will significantly restrict the availability of the exemptions contained in National Instrument 45-106, and thereby significantly restrict the access of exempt issuers to capital.

We do not believe it is correct to analyze the raising of financing pursuant to exemptions as a part of the capital markets generally, or to subject it to similar regulations. The "exempt market" is really not a market at all – it is a series of single transactions by which issuers place securities with purchasers, which securities then do not trade further.

In addition, many of the participants in the exempt market operate in a way fundamentally different from a normal registered broker. In particular:

1. Exempt intermediaries generally do not open "accounts". They should not be required to, as the proposals seem to require.

2. Exempt intermediaries generally do not participate in capital markets transactions, such as purchases and sales on behalf of clients on stock exchanges.

3. Exempt intermediaries often deal with securities purchasers who are not their "clients" in the normal sense of the word, on an ongoing basis. The relationship often exists solely for the purpose of one transaction. The clients would feel it was an invasion of their privacy for the intermediary to inquire about the information needed for a normal "suitability" determination.

4. Exempt intermediaries often restrict their activity to specific securities - for example, real estate development projects, or even to securities of a particular issuer.

5. Exempt intermediaries do not generally handle the funds being invested. The funds go directly to the issuer by a cheque made out in the issuer's name. Insolvency of the intermediary would not affect this process or subject the investor to loss.

General Comments

As a consequence of the above facts, some issues with the proposal become evident.

First, in our view it is inappropriate to require exempt intermediaries generally to follow requirements for capital, bonding and financial record keeping. Of course, it would be possible to require these things only of exempt intermediaries who keep customer accounts or retain client funds.

Second, it is also inappropriate to require know-your-client procedures and other conduct-related matters, which address desirable conduct in the registered broker industry generally. We have no objection to providing general fair dealing or similar honesty-related or anti-fraud

requirements, which could be used to remove "bad apples" from the business in a complaint-based process, but without injecting administrative requirements into the exempt intermediaries' business.

Finally, the proficiency requirements currently proposed relate to general capital markets transactions, and have no bearing on the knowledge relevant to many exempt-market offerings, particularly those relating to real estate. We understand that some current registrants have indicated their existing proficiency requirements may be too lax for registrants generally. We have no comment on this, other than to say it has no bearing on the requirements being inappropriate for exempt market intermediaries. That is, the requirements can be simultaneously too lax for current registrants and too poorly-aimed to be suitable for exempt intermediaries.

Business Trigger

We have no comment on the desirability of the business trigger. However, we would point out that from the point of view of an intermediary in the exempt market trying to comply with the rules, it would generally be too uncertain to be a basis for conduct. Even very occasional participants in the exempt market could be caught by the business trigger, and would find it necessary to be in compliance with the relevant requirements to avoid the risk of being offside the rules.

No current capital-raising exemption is made unnecessary by the introduction of the business trigger. (The isolated trade exemption, which may become unnecessary, is not really a capital raising exemption.) Even issuer-specific exemptions may run afoul of the business trigger the second time an issuer uses them. For example, consider the exemption for the exchange of new securities in accordance with the terms of previously-issued securities (par. 2.42 of NI 45-106). Is it not to be applicable to an issuer who uses it frequently, or to its paid employees who inform security holders of the provision?

Transactions which are exempt must continue to be exempt despite repetition, or capital raising will be adversely affected.

Specific Comments

We have the following specific comments to the requests for comments issued on February 20. Numbering corresponds to the question numbers. We have included specific comments only on those requests which we feel directly address the general comments described above. We have no comment on other issues not bearing on our general comments.

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.*

As outlined above, we are very concerned that under the benignly-titled "fit and proper" and "conduct" requirements, some very restrictive and inappropriate regulations have been proposed, which would severely restrict the access of exempt issuers to exempt capital. In our view, the current provisions in National Instrument 45-106, after much experimentation, have finally provided a workable system, and the proposed requirements threaten the effectiveness of this system.

Specifically, the proposal would tend to create a monopoly of IDA members, for whom they create no additional costs or obstacles in raising exempt capital. Many exempt issuers have found IDA members not to be interested in their financings due to size, or other factors other than investment merit, and would be left with no ability to raise capital.

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).*

We believe the costs of the current proposal - eliminating access to capital for many venture issuers - are far out of proportion to any benefit to be achieved by the proposal, especially when the benefit could be achieved by much more limited rules – requiring fair and honest conduct and limiting financial requirements to those few intermediaries who place client funds at risk of their own creditors.

We would urge British Columbia and the other Canadian jurisdictions, and in particular the Alberta Securities Commission, to take the more limited approach. Parenthetically, we would note that our concerns really do not relate to government guaranteed debt and similar securities, as implied in the request for comments.

9. *We propose that some requirements of Division 1 not apply to clients that are accredited investors as defined in National Instrument 45-106. Is it appropriate to exclude this group, or any other group, of clients from the account opening requirements?*

We have no comment on whether it is appropriate to exempt accredited investors from the account opening requirements for registered brokers. However, we agree that it is not appropriate to impose the account opening requirements on exempt intermediaries for transactions generally which are subject to the exemptions in National Instrument 45-106, including but not limited to transactions with accredited investors.

14. *One objective of National Instrument 45-106 is 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 National Instrument 45-106 or be moved into the Rule?*

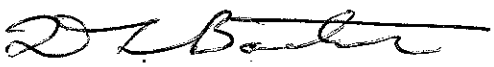
Our submission is that there should be no substantive changes to the registration exemptions as a result of the business trigger and so clearly we believe that they are more appropriately placed in National Instrument 45-106 than in any other place. We also would point out that ease of reference to these rules, by keeping them in one place in NI 45-106, is likely to have a significant positive effect on compliance.

Conclusion

Thank you for the opportunity to comment on the proposals. Please feel free to contact the writer directly if you have any questions or would like any clarification on any of the above.

Yours truly,

SCHINNOUR MATKIN & BAXTER



Dan L. Baxter
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cc William S. Rice, Q.C.
Chairman, Alberta Securities Commission