Suite 600, 645- 7th Ave. SW, CALGARY AB T2P 4G8
TEL: (403) 509-0115 FAX: (403) 262-9520

BY E-MAIL

June 15, 2007

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

Dear Sirs and Mesdames:

Proposed National Instrument 31-103, Registration Requirements

Thank you for your invitation to provide comments on proposed National Instrument 31-103 (the "**Rule**"). We have taken the opportunity to provide some general views on the overall registration proposal and to answer some of the specific questions posed by the Canadian Securities Administrators ("**CSA**") in its Notice and Request for Comment.

We believe that the exempt market is a viable and necessary segment of Canada's capital markets and works very well to service the needs of issuers and provide opportunities to investors that are not available through the public markets and the registered dealers that service those markets. We are concerned that, for the reasons outlined in our letter, the Rule as currently drafted may not achieve its goals and may in fact harm the exempt market and some of its participants.

Our comments are restricted for the most part to those portions of the Rule that relate to "dealing in securities" and, in particular, the proposed new "exempt market dealer" registration category.

Our Experience in the Exempt Market

In our experience, a large number of unregistered intermediaries operating in the exempt market act as finders or referral agents to issuers and do not maintain client accounts or take custody of client's funds or securities. These finders or referral agents have initial contact with an investor and may coordinate the subscription documentation, but generally after the initial contact, the issuer deals directly with the investor, all subscription funds are paid to the issuer of the securities (cheques are made out to the issuer directly) and all security holder accounts and investor funds are maintained by the individual issuers and not the intermediaries. The intermediaries have limited, if any, custody of the cheques and subscription documentation, collecting same from investors and passing them on, without alteration, to the issuer which sells its securities under full disclosure, provides recourse to investors under

an offering memorandum, if one is provided, and fully manages its own investor funds and security holder accounts. Acting in this referral or intermediary capacity is commonly a small ancillary business function of corporations or persons that primarily act as mortgage brokers, insurance brokers, realtors, trust companies or other similar businesses. Finally, in our experience, registered dealers will generally not sell securities of non-reporting issuers unless the offering is of a sufficiently large size or the dealer has another or prior relationship with the issuer or the issuer has plans to go public at some point in the future. In addition, the level and cost of the required due diligence and the commission costs are prohibitive to a large number of non-reporting issuers. The comments and views expressed in this letter are based upon this experience of the exempt market.

In the Business Registration Trigger

We generally agree with the "in the business" trigger as a trigger for the registration requirement, and with the simplification of the exempt market by removing the need for a registration exemption for every trade of a security. More specifically, we agree that persons who hold themselves out as being in the business of dealing in securities or solicit same as their primary business for remuneration are "in the business" of dealing in securities. However, we are concerned that the definition as currently drafted catches issuers or their affiliated entities selling only their own or a related issuer's securities and that are not truly intermediaries or in the business of dealing in securities, but are simply raising the capital required to conduct their business by way of equity or debt financing.

We do not believe that those issuers that regularly raise capital by issuing securities themselves or through an affiliated entity should be considered to be "in the business" of dealing in securities nor should the affiliated entity be considered to be "in the business" if they do not deal in securities for unrelated third parties or as their sole or primary business. In our experience, many businesses that regularly raise capital have one member of a related corporate group that assists with raising capital for the whole corporate group, with or without remuneration, without maintaining investor funds, records, assets or securities and only as an ancillary business function.

We believe that many businesses and their investors are better served by raising capital on an as needed basis, rather than in large amounts with less regularity. The ability of issuers to provide their shareholders with a return on their investment may in many businesses be directly related to the issuer's ability to invest or otherwise utilize the funds raised, rather than having idle cash. By raising smaller amounts regularly or continuously over time, issuers are better able to manage their capital and investments to provide the best returns to their shareholders. The frequency with which an issuer raises capital for its business should not in our view be a determining factor in the "in the business" test.

Utilizing an "in the business" trigger that catches issuers that regularly raise capital, while not applying to an infrequent or one-time project issuer, also results in an un-level playing field with those issuers that regularly raise capital being disadvantaged by having to utilize an intermediary or be registered and having to collect "know your client" information from their potential investors and perform suitability assessments, while other issuers raising capital less regularly may not have this requirement. In our experience, some investors object to having to provide the personal information required in the standard "know your client" form, which could significantly disadvantage one issuer in relation to another.

With respect to the "in the business" definition itself, we find subsection (e) of the definition to be overly broad since it does not relate the profits to the regulated activity. This could result in a person that is profitable in an unrelated business but does not profit from (or even receive remuneration for) its regulated activities nevertheless being caught by this factor of the definition.

Dealer Categories

We propose that a separate dealer category be added to the Rule specifically for issuers selling only their own securities directly or indirectly through an affiliate and who are not truly intermediaries or "in the business" of selling securities, but who are nevertheless caught by the "in the business" definition. We believe that the registered dealer category, intended to address situations where the products on offer are restricted by type and/or issuer or

where the Rule does not properly fit the situation, may nevertheless cause hardship for issuers who regularly sell only their own securities by creating uncertainty, given that the conditions of this registration are imposed at the time of registration and may differ from issuer to issuer or across jurisdictions, and will add delays and costs resulting from having to make an application and undergo an assessment by the regulators to determine the conditions of registration every time an issuer is created that intends to raise equity capital itself with some regularity.

We believe that a separate category with pre-set conditions would provide greater certainty, fairness and harmonization among issuers and across jurisdictions. We also propose that this category include an exemption from the fit and proper and conduct requirements given that these issuers are directly selling their own securities and must follow the prospectus exemption requirements in order to sell their securities, with recourse for investors directly back to the issuer. Eliminating the fit and proper and conduct requirements for this category of dealer acknowledges the lesser likelihood of unfair, improper or fraudulent practices in these offering situations, especially where an offering memorandum is utilized, and that a level of investor protection measures exist for each sale through the exemption requirements and the fact that the issuer itself or a closely related entity facilitates the sale. In addition, this would reflect the reality that issuers are not intermediaries and would go some way to levelling the playing field among issuers that regularly raise capital and those that infrequently raise capital by eliminating the "know your client" and suitability assessment requirements for issuers. As previously stated, we do not agree that the regularity with which capital is raised should be a factor in determining whether an issuer is in the business of dealing in securities.

Question #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

We believe that requiring individuals to pass the Canadian Securities Course in order to sell exempt market securities is too onerous given the limited nature of the incidental advice required to perform a suitability assessment and the broad and complex nature of the course materials. We also believe that this standard is overly onerous to an issuer or its affiliate that is required to become registered in order to regularly sell only its own or a related issuer's securities or a limited type of product. As an example, employees of a corporate issuer selling that issuer's preferred shares do not need to understand the mechanics of the Canadian bond market in order to assess whether a preferred share of the issuer is a suitable investment for an individual investor.

As previously stated, in our experience a large number of intermediaries in the exempt market act as finders or referral agents and do not maintain client accounts or take custody of client's funds or securities. Trades are made by the issuer directly and all trade confirmations, delivery of securities, periodic account statements and communication is made directly by the issuer to its securityholder. In these circumstances we believe that the proposed working capital, audit and insurance requirements are inappropriate and may act as a serious barrier to legitimate smaller intermediaries. Given this set of facts, the financial viability of the intermediary has no relevance and we propose that an exemption from these monetary requirements be instituted for those intermediaries in this position. We also understand from attendance at industry consultations that a financial institutions bond is simply un-attainable by a sole proprietor and the proposed working capital and audit requirements are serious barriers for most sole proprietors. Errors & omissions insurance has been suggested as an alternative to a financial institutions bond, however, given the subjectivity of, and the incidental nature of the advice required to perform a suitability assessment and the potentially very limited involvement of a finder or referral agent in the exempt market sales process, even this insurance cost may be burdensome, of limited availability, and in the end of questionable relevance.

For the reasons stated above, we don't believe that the proposed education, audit, insurance and working capital requirements will achieve the investor protection or enforcement goals of the CSA and will in fact harm the exempt market and a number of legitimate participants. We believe that registration without these requirements or, as suggested by the British Columbia securities commission, using a principles-based approach to the requirements, including the conduct requirements, which acknowledges the wide variety of market participants and products, is a viable compromise. With a principles-based approach, the level of education or experience of the issuer or intermediary required to sell each product would be up to the issuer or intermediary to determine and would then form part of its defense to a claim by an investor based upon a suitability assessment or a regulatory

enforcement action, similar to a due diligence defense. In addition, using this approach, the conduct requirements could be tailored to a particular firm's business model and would address the inapplicability of a number of the requirements to a firm that does not have a relationship with an investor that extends beyond facilitating the execution and delivery of subscription documentation for a particular sale. Given the lack of a contractual relationship with investors by these intermediaries, we submit that a suitability assessment is not a proper tool for this particular type of sales process and market.

As previously stated, we believe that the exempt market and these participants fill a legitimate need within the capital markets given the reluctance by, or time and expense of involving registered dealers in raising capital for non-reporting issuers and believe that the registration requirements should not be set at a level that may force a segment of the exempt market out of business.

Question #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).

In our experience, the existing exempt market system works well. No opportunity, in the exempt market or a listed market comes without risk and we believe that the existing exemption requirements provide an appropriate level of investor protection without a third person, related or un-related to the issuer or the issuer itself having to assess suitability for an investor. We believe that sufficient investor protection mechanisms are built into the existing exemptions. For example, the offering memorandum exemption requires a disclosure document describing the issuer, the investment and the risks associated with the investment, provides investors with statutory or contractual rights of action against the issuer and its principals for misrepresentations, requires investors to reflect on the risks by signing a risk acknowledgement form before investing and requires a two day rescission period after the investor has committed to the investment. The very nature of the accredited investor exemption appropriately shifts the onus of suitability onto the investor who is adjudged to have the financial wherewithal to make independent investment decisions and absorb the risk of investing in an exempt market product. The same comments apply to the $150,000 exemption. We believe that the exemptions as currently drafted strike an appropriate balance between allowing issuers to raise needed capital and protecting investors.

We don't believe that the entire, or even the majority of the onus for the investment decision should be removed from the investor's hands or that providing investors or regulators with recourse against intermediaries for a subjective suitability assessment which actively involves the investor (through providing the information on which the assessment is based) enhances investor protection or provides better regulation. Since the suitability assessment is primarily subjective, provided all "know your client" information is collected, unless clear negligence, fraud or wrong-doing is present, we fail to see the value of the suitability assessment as an enforcement tool.

In our view, the exempt market allows a product to be offered for public participation with the full understanding of all parties to the transaction that the decision and corresponding investing risk rests squarely with the investor provided that the issuer has fully complied with all exemption requirements. If investors are placing unwarranted reliance upon intermediaries to advise them whether to make a particular investment, then we suggest adding a tool to highlight to investors that the investment decision and the responsibility for such a decision lies with the investor, rather than attempting to shift the onus of the investment decision away from the investor. If an investor wants advice on an investment, then an intermediary or issuer should advise the investor to independently seek that advice from a properly registered advisor or other applicable professional advisor. We understand that unscrupulous intermediaries may not do this, but neither, we submit, would they then perform a proper suitability assessment. Again, in the absence of clear wrong-doing, negligence or fraud where it can be shown that the investment is indisputably unsuitable for a particular investor, we do not believe that this tool is going to prevent unscrupulous promoters from promoting unsuitable investments or allow regulators to penalize or stop the promoter since absent the factors above, it is ultimately a subjective assessment, even if a reasonability standard is applied.

As an alternative and in line with our suggestion that the onus for the investment decision and acceptance of risk be primarily left with the investor (and compliance be primarily the responsibility of the issuer through the exemption requirements), we suggest that a risk acknowledgement form/component, with listed risk factors if thought prudent, could be added to the accredited investor and $150,000 exemptions with clear language which requires investors to acknowledge the risks of investment and to independently consider and accept responsibility for the investment decision. The same cooling off period as required under the offering memorandum exemption could also be added as a further measure to allow people to reflect and re-consider an investment. We believe that both of these measures would help to make people less susceptible to aggressive promoters and impulsive decisions and would give regulators a response to investors that complain about investments which ultimately perform poorly. It would also give regulators another tool to pursue intermediaries who do not clearly inform investors of the potential risks of an investment. We believe that a preventative measure, such as the one suggested, may be more effective than a suitability assessment and we believe that current enforcement measures adequately deal with situations of actual fraud or non-compliance. In our experience, people do understand the significance of the risk acknowledgement form and do in some cases refuse to sign it and not invest because they are not willing to bear the responsibility for the risk.

Question #6: Please provide us with comments on what positions in a firm should be considered part of the mind and management and what issues or concerns you or your firm would have with registration of individuals in those positions

Given the potential inclusion within the "in the business" definition of issuers and corporations whose sole or primary business is not dealing in securities, we submit that the persons included in the registration requirements should be limited to those directly involved in the mind and management of the regulated activity, rather than those involved in the mind and management of the primary business of the firm since these may be different persons and there will be a cost involved in registration with no corresponding value for those persons not directly involved in the regulated activity. We believe that registration of an Ultimate Designated Person and Chief Compliance Officer who is, or are, directly involved in the mind and management of the regulated activity, along with the salespersons would be sufficient in most situations.

Section 5.30 – Dispute Resolution Service

This section requires a registered firm to participate in a "dispute resolution service' similar to that provided to firms that are members of a self regulatory organization (SRO) by their SRO. Given that non-SRO firms do not have a self regulatory organization that provides this service, will the securities regulators in provinces and territories other than Quebec be willing to act in this capacity, similar to the AMF in Quebec, and if not, what organizations are contemplated by the CSA for this requirement and have the costs of this service, especially to smaller firms, been explored?

Proposed Form 33-109F1 – Notice of Termination

Items E5 and E9 of this form currently require a yes or no answer. We submit that a registrant may have trouble answering yes or no to these questions without the proviso "to the best or our knowledge" or "that the firm is aware of" since these two questions as currently worded encompass situations that may occur outside of the scope of a person's employment or without the employer's knowledge.

Transition

Depending upon the final form of the Rule, there may be a number of steps that issuers or intermediaries need to take or implement to become compliant. The education requirement is especially time consuming and may require a significant time frame to implement for larger organizations with a number of employees. Also, if an existing issuer or intermediary wishes to apply to the regulators for registration as a restricted dealer, especially in multiple jurisdictions, sufficient application time in addition to compliance time will be required. Given these circumstances, we would request that a transition period of at least one year from the date the Rule comes into effect be instituted to allow for all of the required adjustments.

In conclusion, from our attendance at a variety of consultation sessions hosted by the Alberta Securities Commission and, in one instance attended by representatives of the British Columbia and Ontario Securities Commissions, we have heard the exempt market participants in attendance state that they do not object to being registered as exempt market dealers so that they are visible to the regulators and can be regulated where required; however, the fit and proper and conduct requirements for this category are too onerous and/or don't properly reflect the realities of their business, and the imposition of these requirements will drive many legitimate participants out of business. The exempt market is necessary to the Canadian capital markets and to the small and medium businesses that have no practical alternative access to these markets. We would appreciate the CSA's continued efforts to streamline and adjust the Rule or to adjust the exemptions themselves to achieve its goals in the least invasive and least damaging way possible to a system that in our view currently works well.

Yours very truly,

"Susan Belcher"

CareVest Capital Inc.
Susan M. Belcher, General Counsel