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Citrine Investment Services
66 Tuscany Glen Way NW,
Calgary, Alberta, T3L2V9

Attention:

John Stevenson, Secretary, Ontario Securities Commission
jstevenson@osc.gov.on.ca

Greg Melchin via email: Calgary.NorthWest@assembly.ab.ca

Anne-Marie Beaudoin, Directrice du secretariat, Autorite des marches financiers consultation-en-cours@lautorite.qc.ca

British Columbia Securities Commission

Alberta Securities Commission

Saskatchewan Financial Services Commission

Manitoba Securities Commission

Ontario Securities Commission

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

Re: Canadian Securities Administrators Registered Reform Project (RRP) and Proposed National Instrument 31 – 103 (NI 31-103)

The intent of this letter is to address concerns with the proposed changes and introduction of NI 31 – 103 and ask you to carefully consider the overall impact of such impending legislation.

The RRP severely limits access to solid investments by the public and rather does much to expand the interest of large securities industry registrants and their national trade organizations, namely the Investment Dealers Association (IDA) and the Mutual Fund Dealers Association (MFDA), at the expense of other industry participants, namely non-registered exempt issuers. If implemented as proposed, exempt issuers will end up 'paying' a *registrant*. Indirectly the RRP is industry's attempt to also force the investing public to use the services of *registrants*, whether the public needs – or wants – to. (The bi- product of this change will be a monopoly)

The CSA must protect the interest of the public, as well as the interest of *all* industry stakeholders and participants, including non-registered exempt securities issuers and intermediaries. The RRP does not do this. It is apparent that the **RRP is clearly competition legislation** and should be viewed as such.

Non-registered issuers and intermediaries ought to be represented on the RRP steering committee. After all, 'we' are the targets of the RRP and, having a considerable presence in the market, they should have the right to advance their position on the RRP Steering Committee. Who appointed this 'Steering Committee'? Why haven't the regulators insisted that *all* affected parties be represented on the Steering Committee, to ensure an equitable process?

We are essentially being regulated by our competition, which is a complete conflict of interest. Six of eleven members of the CSA's RRP Steering Committee represent companies and industry trade associations (Investment Dealers Association, Mutual Fund Dealers Association, Investors Group Inc., etc.). All are clearly special interest groups with no mandate but to advance their members' position. The IDA and MFDA are 'trade associations'. What business do they have 'regulating'? WHAT RIGHT DO THESE SPECIAL INTERESTS HAVE TO 'REGULATE' THEIR COMPETITION?

Lack of informing those affected of the pending legislation/meetings.
Everyone at the most recent Alberta Securities Commission (ASC) meeting filed with the ASC in the last few months and essentially NONE OF US were informed of the meeting. How are we suppose to provide our input if we are not informed as to what is occurring? Why didn't the ASC let us know about the meeting when its subject matter directly affects our livelihood? Which on another note, goes against the civil rights code, whereby you can not prevent an individual from earning a living. So there is also the potential fall out from that perspective.

Why didn't the ASC put an ad in the paper informing everyone? Why wasn't the media informed as a public service announcement, if this is truly in the best interest of the public? Why didn't they send everyone that would be impacted letters (they stated they did, yet no one received them…)? Where is the accountability on their end? Invitees to the RRP consultation session in Vancouver on May 7, 2007 were advised that there were **3,500 non-registered exempt issuers and intermediaries in Canada. That is a very significant constituency base; yet only a small**

fraction of individuals were invited to the consultation sessions. Why not all of them? Who determined the invitation criteria? Were any intermediaries/sales reps/referral agents invited? Why was the registration for the meeting closed off prematurely? Shouldn't all affected have a chance at having their voices heard? Canada is supposed to be a democratic and free market economy.

WHERE IS THE PUBLIC'S VOICE? Has the public been surveyed to see how they feel about the RRP? Have exempt-product shareholders been consulted? It is simple process as every investor/shareholder is clearly identified on every filing with relevant securities commissions. Regulation is suppose to be for the public good, put the public first and allow people freedom to invest where *they* choose to invest, and in what products *they* chose to invest without this type of censorship? How would your investors feel if you were no longer able to offer them investments as you do at present (which could potentially happen)? This is also a very large constituency base of people that will be very upset and many are very influential, high net worth individuals. Who is looking out for those investors that have been satisfied with the exempt market and the ability to choose their investment vehicle?

Why the need for reform?
Where is the proof to substantiate these proposed changes are validated? They indicated that there are multiple investor complaints (we've since learned that enquiries are treated as complaints by the ASC) however no statistical information/examples have been produced. This process is faulty in it own right if an inquiry is deemed a compliant. There is a very large distinction between complaints and inquires.
They stated the complaints are posted on their website, however there is less than a handful of examples sited. This appears to be a clear cut case of penalizing the majority for the actions of a few? The proposed changes will not eliminate the wrong doers, just legitimize them and further restrict access to capital for legitimate business professionals.

Where are the public complaints? Where are the complaints about lack of registration, lack of working capital, lack of financial institution bonding, lack of $50,000 – $200,00 working capital reserve, lack of know-your-client forms? Where are the complaints about significant security holders not being registered? Where are all the complaints about non-registered issuers not having taken the Canadian Securities Course, etc?? This has the appearance of allot of unsubstantiated claims, without allot of concrete facts to support this impending initiative.

Additional Enforcement
There is a requirement for stronger enforcement by the ASC, not further regulation. There is a lack of response on current legitimate enquiries/complaints. Their efforts should be spent on enforcing existing rules and not on implementing new ones. Why not remove the wrong doers to protect the public, as opposed to creating barriers for legitimate business professionals?

The focus should be on the institutions/developers that are offering these investments to insure the viability/soundness and scrutinize the offering memorandums. The brokers/ sales reps should not be the ones having to carry the burden of working capital.

Why is Alberta taking this direction 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 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? Alberta is considered a progressive entrepreneurial haven, yet this is not conducive to capitalism, free enterprise or the democratic process. Alberta is being very short sighted if they think this impending legislation is not going to be adversely impact commerce on a much larger scale. It is the Macro perspective that politicians/regulators alike should be looking at.

Know Your Client ("KYC") Forms

The investing public does not want to be forced to provide their entire financial portfolio in order to make a $10,000 investment in a single, fixed term, non-redeemable/non-tradable security. It is not in the best interest of the public to violate and infringe on their right to privacy/information. Has the information and privacy commission considered the impact this will have from a FIOP perspective?

KYC forms require an annual update. If the investor is in a fixed term deal and the security is non-redeemable/non-tradable security (as it is an exempt security that doesn't trade on an exchange), then how is a KYC relevant? If the investor's financial status/risk tolerance/etc. change, it is then inconsequential, as they are unable to "exit" from the investment at that point regardless. KYC reviews create a conflict for single-product issuers and their managers; therefore these parties must be prohibited from using them.

KYC reviews have a place amongst brokers, mutual fund dealers and advisors selling financial planning services, people who are paid by their *clients* to provide advice and financial services; but they have no relevancy in the single product exempt market where no such services are provided, let alone paid for by the investor. Under the current process in the exempt market "Offering Memorandums" are very concise and provide the investors with a synopsis of the overall investment.

How is it that after insisting that the customer acknowledges via the Risk Acknowledgement form that "*The person selling me these securities is not registered with a securities regulatory authority and has no duty to tell me whether this investment is suitable for me.*" it then becomes appropriate for the representative of the exempt issuer or its manager/marketer to insist that the customer complete a 'know-your-client' and 'suitability assessment'.

There is no question that multiple investors will choose to not subscribe in exempt securities if they have to paint a financial picture of themselves to a sales representative.
Exempt issuers will lose investors due to this rule alone. Perhaps that is the hidden agenda, veering back to competition legislation!

Existing forms/exemptions are adequate.

Regardless of their financial status/risk tolerance, an investor in an exempt security has to sign a form acknowledging the potentiality of "LOSING ALL OF THEIR MONEY". If they are willing to sign that form, it is safe to presume that the monies they are investing are risk capital that that they can afford to lose so the KYC becomes irrelevant again.

Unsophisticated investors are restricted as to how much they can invest in a given province regardless of the disclosure they are provided with (i.e. in Alberta, unless you meet the eligible investor status, you cannot invest more than $10,000). This provision alone is an existing built in safeguard.

The investing public now knows that exempt securities have comparable *risk to* publicly-traded securities In allot of instances exempt investments are more conservative due to the investor

being protected against the title of a property. The CSC was not able to prevent the WorldCom or Enron disaster for investors with all their existing regulation/protection.

CONSUMER CHOICE/PROTECTION

How is buying an investment different than buying other items?
There is no requirement to fill out a KYC form when partaking in other transactions/consumerism where you are GUARANTEED to **lose** money. When someone purchases a new vehicle, the second they drive it off of the lot they lose thousands of dollars in depreciation and did not have to fill out any forms. The Consumer was allowed to make their own decision on the basis of their own understanding of their financial status and comfort level. Why is this any different? Under the current regime of offering memorandums, investors are better informed than they are when making any other purchase decision (even that of a new home). There should not be purchaser limitations.

Licensing Requirement
Licensing is agreeable, however should be similar to obtaining a drivers license. We agree that those who sell investments should be required to have certain credentials in order to do so. We feel that those who sell investments should have to receive a RCMP search clearance; securities commission search, bankruptcy check, etc. and meet applicable set requirements (provided they are reasonable). Only reputable/credible individuals should be allowed to offer investments so why not have some fair and relevant requirement for licensing? This would be the most effective tool to police the industry and make individuals accountable for their individual actions.

Working Capital/Bonding/Audited Financial Statements
This should only be applied if the securities dealer is actually holding investor cash. The investor funds go straight into the investment product (generally via a trust account) so why is there a need for this? From a cost benefit analysis perspective, this is strictly an aim at adding costs to the industry with no benefit. Demonstrate how this makes business sense? Working capital between $50,000-$250,000 would be excessive and punitive to individual agents and small organizations.

Financial institution bonds are very difficult to obtain and will not be obtainable by many smaller investment companies/promoters/dealers. On its own, this could put a number of companies out of business and would make all prior recommendations completely irrelevant.

There is a clear and important distinction between the situation where the investor simply buys a product and the situation where the investor opens an account with a financial or investment advisor, investment dealer or mutual fund dealer, and, in addition to possibly buying investment products, pays a fee for brokerage and/or financial and investment advisory services.

Canadian Securities Course ("CSC") is Problematic
This course is all but irrelevant to 90% of exempt securities dealers. 90% of exempt securities dealers deal in real estate investments in one way or another and the CSC has but a few pages in it that reference real estate/mortgages/Mortgage funds/etc. Perhaps some sort of course is a good idea but it should be based on what is being sold by the exempt dealers and the CSC essentially does not apply at all. Possibly a real estate course, etc. would be a better recommendation.

Having the sales rep. take this course will inevitably leave the investor with a false sense of security feeling that the sales rep. knows what they are talking about and knows what types of investments are suitable to the investor. The current Risk Acknowledgement form serves to better protect the investor by essentially indicating that the sales rep does not know and is not concerned

if the investment is suitable to them and discloses that they are paid for selling the investment. How much more do we need to protect people from themselves? We're preventing people from making informed decisions, not protecting them.

The CSC is a course clearly designed for individuals desiring to be in the securities business.

Investors are interested in what the personnel know about their specific investment product (mortgages/raw land/commercial buildings/etc.), *not* what they know about brokering stocks, selling mutual funds and giving financial and investment advice.

The Working Group must provide clear examples of where *harm to the public* could have been prevented had representatives of non-registered exempt issuers or their affiliated managers taken the Canadian Securities Course. I strongly recommend that an unbiased educational institution evaluate the requirements and suggest a course or an equivalency based assessment process (licensing) to ensure competency levels for all players. There should be consideration for those individuals that have already attained a relevant designation (degrees such as MBAs, BComm's, CMAs, etc. I think it is also important to identify that there is no need for ***imposing*** legislated education, as the public will decide competence based on performance and knowledge of the specific investments that are sold.

Conclusion

The truth is that the trouble exempt issuers and their managers face is the black eye that the industry – that is *registrants* – have given the investment business, not the other way around. Many of you probably find that many investors who are suspicious about investments are suspicious because of the way they've been treated by so-called industry 'experts' (*registrants*) such as stock brokers, financial planners, investment advisors, mutual fund dealers and the like. You probably find that many investors want to make investments directly, and not through registrants. We are victims of a registrant-caused industry problem, not the cause of it.

The RRP does not improve investment opportunities. The RRP does not address imperatives of proficiency, solvency and integrity [which are already dealt with by 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 best way to fix something that is not 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.

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 *registrants*.

In Alberta our province is stricken with inflation, cost of living on the rise, increased homelessness and many of the funds from the exempt market assist in helping to provide

the creation of additional infrastructure. Some funds allow for the building of affordable housing, providing mortgage financing that would not otherwise be available to homeowners, some are allocated for the creation of innovative product innovation and funding entrepreneurial enterprise, which results in job creation, etc. At the end of the day, if these funds are not as accessible to exempt issuers due to imposed regulations, the province, the public and commerce in general will adversely be affected (beyond more than earning a better "**R**eturn **O**n **I**nvestment").

I think it is imperative not to loose sight of the mandate and if that is truly to "protect and serve the best interest of the public", then mandatory licensing is the best approach to ensuring individual and collective industry integrity.

I look forward to your timely response to discuss this matter further.

Sincerely,

Darcee McJannet
Investment Consultant
Citrine Investment Services
(403) 243-0763