OLYMPIA
Trust Company

May 14, 2008

John Stephenson
Secretary, Ontario Securities Commission
Via E-Mail

The Honorable Iris Evans
Minister of Finance, Province of Alberta
Via E-Mail

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

I am writing to you today to discuss several issues surrounding the Canadian Securities Administrators ("CSA") Registration Reform Project ("RRP"), commonly referred to as NI 31-103.

Olympia Trust acts as trustee, holding securities sold by the exempt market that qualify as eligible investments for registered savings plans. We currently hold in excess of $1,000,000,000 of exempt market securities, which have been sold primarily in Alberta and British Columbia. These funds have come to us mostly in the last three years and over 90% of the funds raised have been through the use of offering memorandums, following the rules of NI 45-106 that came into effect about the same time that the CSA began their reform project.

It is safe to say that the hard work that went into the drafting of NI 45-106 was well worth the effort. It has been a huge success and it could be argued that it has created some much needed competition in the capital markets.

The Alberta Securities Commission ("ASC") recently held public consultation meetings in Calgary and Edmonton for interested parties with respect to the reform project. Originally only planning for two sessions in Calgary, the commission staff had to schedule three meetings in Calgary and one in Edmonton to accommodate the interested parties (all four meetings ended up being overbooked with some people being turned away). I attended all three Calgary meetings and have some comments with respect to those meetings. They are as follows:

Items Rectified Since the 2007 RRP Meetings

The original proposal which was brought forth in 2007 had called for all those in the business of marketing exempt securities to be registered. It was proposed that each exempt market dealer would need to maintain $50,000 of free working capital, provide annual audited financial statements, and secure proper bonding. In addition to these requirements, each exempt market dealer would be required to have an officer that had passed the officers and partners (or equivalent) exam. These requirements (as long as the registered dealer was not holding cash: a promise was made at the recent meetings to review the definition of holding cash) have since been eliminated and replaced with the simple registration of a dealer and quarterly unaudited, non GAAP financial statements. This was a huge change and reflected on the comments that the industry had put forward in the 2007 consultations and credit must be given to the ASC staff for listening to the industry on this issue.

KYC Forms / Risk Acknowledgement Forms

Despite substantial objections since the 2007 meetings, the ASC staff are still pushing for exempt market dealers to begin using Know Your Client ("KYC") forms. This suggestion has not been met with any enthusiasm by the industry for several reasons, which are as follows:

Most of the exempt offerings (using the offering memorandum exemption) in Alberta involve the sale of some form of real estate. An average investor who is investing $10,000 in a piece of real estate at Balzac, etc. would most certainly not feel they should have to tell the salesperson about all of their other assets. By requiring the salesman to complete a KYC form before they could accept a subscription for an offering, there is a huge concern that the sale would be lost because the investor would simply refuse. **Investors purchasing these exempt securities are not looking for a financial advisor, they are simply trying to make an investment.**

The purpose of a KYC form is to determine the suitability of the investment for the investor. In the non-exempt market, all prospectus offerings deal with risk and the registered dealer or mutual fund assigns a risk level to all listed investments. The customer declares their risk tolerance as being low, medium, or high and it is up to the salesperson to make sure that the investments that an investor makes are consistent with the investor's risk tolerance. The salesperson can be held accountable because the mutual fund or the registered dealer has determined, at least in their perspective, what the level of risk is. This is a more difficult task than one might think in the exempt market primarily due to the existence of the Risk Acknowledgement Form and the classification of all exempt market securities as being high risk. In the exempt market (the offering memorandum market), each investor has to sign a Risk Acknowledgement Form, stating that they understand that the investment is high risk and that they could lose their entire investment. Interestingly, it doesn't matter whether the statement has any bearing to reality, it must be signed. For example, if the investor was investing in a company that was going to invest in bonds issued by the Province of Alberta, the investor would have to sign the Risk Acknowledgement Form stating that the investor understood that they could lose their entire investment. The simultaneous existence of these two forms in the exempt world create a huge conflict as investors will either have to lie and say their tolerance to risk is high (even if that isn't the case) or sign a form indicating that they could lost all their money (even if that isn't the case).

The KYC form clearly is appropriate for registered dealers as it establishes a link between a salesperson's duty to match his registered dealer's risk assessment to the suitability of certain investments for each investor who has indicated their risk tolerance. The Risk Acknowledgement Form clearly is appropriate for the exempt market as it has the investor acknowledge 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." Clearly the investor in the exempt security sold under 45-106 is substantially warned that the investment is risky, they could lose all their money, and the salesperson is not under any duty to see that the investment is suitable. This is how it is supposed to work. The two forms clearly cannot live simultaneously in the exempt market. Either the CSA have to review each exempt offering and classify it as low, medium, or high risk (and remove the Risk Acknowledgement Form requirement in some cases) or remove this idea of KYC's being required in the exempt market.

It is not clear why the commission staff think that investors would be better served by someone registered with the commission, who has limited financial knowledge (e.g. they have just completed the Canadian Securities Course), and need the investor to complete a suitability form (i.e. KYC) than they would be served by the status quo. **In fact, the new proposals would very likely lead the investor to a false sense of security.** The investor is more likely to let their guard down dealing with someone registered with the commission, who needs all their financial information to assess suitability than they are with someone who they are led to view as an uncaring and unqualified commission based salesperson.

Investors need to be wary. The Risk Acknowledgement Form accomplishes this objective. Of the over $1,000,000,000 we have in trust, we are aware of only $10,000,000 (1%!) that has had any issues and those issues would not have been any less had the salespersons been registered, passed the Canadian Securities Course, or completed KYC forms.

There will always be some bad apples in this industry. Putting rules in place for those who follow the rules doesn't catch those who want to prey on gullible investors. Better enforcement of existing rules would likely lead to more success.

At an investor forum in June 2007, there were 500 plus investors present. When told of the government's future plans to have them divulge all of their financial information prior to them being able to invest in securities similar to those being presented that day, 374 of them took the time to sign a letter, complete with contact information saying they objected to this. These letters were sent via email to the CSA before the public comment deadline on June 30, 2007 and were ultimately never posted on the CSA's website. The ASC staff were made aware of these additional 374 submissions the week prior to their most recent public consultations and it was unsettling that even though they were aware of these additional comments from the public, they did not mention these had been sent and had to be reminded at each session of these investors rejection of the idea of KYC forms.

Clearly, if 374 of 500 investors who are at a forum where several exempt market investments are being offered reject the idea of Know Your Client Forms, then the ASC staff should reject the idea as well.

Canadian Securities Course

At the recent public consultations held in Calgary the ASC staff made it very clear that they were "very firm" with respect to the need for all registered representatives to take at a minimum the Canadian Securities Course. There was an admission by the staff that the completion of this course did not make one an expert in financial matters but it was a start. A poll of hands was taken at two of the three meetings held in Calgary and attendees were asked to raise their hands if they thought that taking the course would help their salespeople with their customers. Not a single hand was raised.

One of the reasons that there was no support for the proposal is that most of the issuers and sales people in Alberta (and therefore at the meeting) sell real estate based securities. The Canadian Securities Course has four pages dealing with real estate and the depth of the analysis is elementary at best.

So here we have a commission staff saying they are "very firm" on all sellers of exempt securities taking this course and the industry and sales people involved see no relevance and see this as nothing more than an artificial barrier to entry into the business.

One could only hope that this was not what the commission staff could define as consultation.

The Need for Registration / The Current Regime's Problems

ASC staff suggest that because the dollar volume of exempt trades had risen dramatically (it has grown to billions) the sales people need to be registered. That in itself is not a very good reason. The commission staff only knew the amount of money raised in the exempt market had grown to billions because the issuers were required by law (45-106) to report the distributions, the dates of the distributions, the exemptions relied upon, any commissions paid, and to identify the sales person. The fact is there are regulations in place that are currently working. There is no information in the new proposed regime that will gather any material amount of additional information.

The second reason stated for a need for registration was the abundance of improper trading in the exempt market. When Shaun Fluker, a consultant to the ASC, reviewed the ASC's website it was concluded that the majority of ASC hearings were as a result of improper trades in the exempt market.....it would have been quite unusual to have had most of the activity of the board dealing with non-exempt issuers, would it

not? Remember, non-exempt issuers can't go to market unless the commission approves their offering and unless it is distributed through registered dealers. The question needing asking is how is the exempt market performing in Alberta since 45-106 was introduced about four years ago? From our perspective, the volume of dollars has gone up significantly but the quality of deals has also gone up. The securities issues arising out of $1,000,000,000 where Olympia Trust has acted as trustee have been minimal. In other words, 45-106 seems to be doing a fine job of balancing the need for protection and disclosure to investors while allowing the business community to access capital markets at a reasonable cost and with efficiency.

Conclusion

In conclusion, there is no problem. None has been proven and none exists. The biggest problem confronting the exempt industry is that the ASC staff have been a part of this reform project for four years and need to implement some change in order to justify the time spent. The better position would be to adopt the position taken by the BC Securities Commission that has reviewed the proposals and has reached the same conclusion of the writer...there is no benefit to the capital markets from the proposed changes and there is some merit to the position taken that it could reduce competition in a market already dominated indirectly by the major banks.

Rejecting the implementation of these reform proposals only clarifies the need for Alberta to reject the idea of a national regulator, if in so doing would deny Alberta the ability to regulate its internal capital markets. Alberta needs to retain its independence and rule making ability in its own capital markets. Ontario, the Province most in favor a national regulator, has failed to adopt the offering memorandum exemption that has been adopted by all other provinces. It is thought that Ontario's refusal to adopt the offering memorandum exemption is a result of the influence of the Investment Dealer's Association ("IDA") on the Ontario government and securities commission. Most who operate in the exempt market in Alberta fear that if a national security regime is put in place, 45-106 will ultimately disappear.

The Alberta industry is also afraid that the adoption of NI 31-103 will lead to the same results as when the Mutual Fund Dealers Association ("MFDA") became a self regulating body. Quickly, the bank owned IDA members (who out numbered the independents) encouraged the MFDA to create more regulation and supervision rules that were tailored to their larger operations and forced most, if not all of the smaller independents out of business. I was one of them.

In summary, the success of 45-106 should not be undone and the reform proposals by the Canadian Securities Regulators should be rejected.

Yours truly,

Rick Skauge
President