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Capital Corporation

Where Land, Life and Opportunity Merge

May 28, 2008

John Stephenson
Secretary, Ontario Securities Commission
Via E-Mail

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

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

I am writing you to discuss several issues of concern as well as suggestions surrounding the Canadian Securities Administrators (CSA) Registration Reform Project (RRP), also known as NI – 31-103.

BACKGROUND: I am writing as the Senior Marketing Director of Foundation Capital Corporation a sister Company of Harvest Capital Management Corp. and Harvest Financial Services (1994).

While we exclusively market real-estate based Exempt Securities, it should be noted that it is our general policy to advise prospective investors to not place 100% of their investment portfolio in any one kind or category of investments. We are not against mutual funds as being an important and valid option for investors to consider towards diversification. But, as those who were heavily invested in the mutual fund industry in 2001 can attest, a single dimensional approach to investment planning is a bad and very risky approach. I know many people who were on the edge of being able to retire back in 2001 who are still not where they were before the events of 9-11. In fact, some who were heavily invested in tech stocks will never get back what they lost.

It is therefore our view that investors should be diversified in a range of investments including real-estate based syndication projects or at least that investors should have that option. We believe that the current regulations surrounding the Exempt Securities industry, 45-106, does serve Alberta investors well and are concerned about some of the proposals for changes that are now being considered.

A) THE 'KNOW YOUR CLIENT' FORM REQUIREMENT: The proposal of a Know Your Client (KYC) in the context of the currently required Risk Acknowledgement (RA) form seems a cleverly designed tactic to put those who are marketing Exempt

Securities in an impossible position. If the KYC form indicates that the client should only be investing in 'lower risk' investments, then how can a marketing representative or prospective client, with good conscience, justify signing the RA form as it is presently worded?

The RA form 'paints' all Exempt Securities as 'High Risk' investments whether they actually are or not. The RA form is a blanket claim that attaches itself to any and all private offerings even if those investments, by virtue of their structure, are in fact low risk investments. All of our current offerings are real-estate investments and in every case, the real-estate is the asset that backs the investment. Financial institutions (including the big Banks) routinely provide loans in the form of a mortgage, for example to home buyers, and they do so based on the fact that the loan is backed by real-estate. The very same institutions, which also happen to own mutual fund brokerages, now seem to be arguing that ALL Exempt Securities, even those back by a mortgage position on real-estate are 'high risk' investments. In that sense the RA form does a huge disservice to investors in that it makes an emphatic statement that is not true of all Exempt Securities.

The point here is very simple – if you are going to have a KYC form requirement it is our position that you should remove the requirement for the RA form, or at the very least amend the wording on the RA form. You might say ***"I acknowledge that this investment MAY be a high risk investment and in such a case I may lose all the money I invest"***.

If the interests of the investor are truly what is driving the agenda of the RRP, then it seems that accuracy in what is being stated is a good starting point. It is our position that the requirement for the KYF form be dropped (ideally), and/or that the Risk Acknowledgment form should be amended to make it an accurate document. Only with the amendment(s) on the RA form should the KYC form be considered.

B) REQUIRMENT FOR A CANADIAN SECURITIES COURSE: On the matter of requiring all who are marketing Exempt Securities to take a Canadian Securities Course we would like to make the following observations and suggestions:

1. The Canadian Securities Course as it now stands is pretty well 100% irrelevant to the real-estate based Exempt Securities industry. There is almost no mention of real-estate based investments in the course. It is biased towards one sector of investments at the expense of another. Again, it seems self-evident that such a bias does not serve the interest of the investor. Requiring those who market real-estate based Exempt Securities to take a Securities Course as a means to 'protect the investor' is like requiring real-estate agents to take a life insurance course in order to protect the home buyer. It makes no sense at all.
2. We believe that the Exempt Securities industry (especially the real-estate based sector) is of sufficient maturity in its development and importance to the economy, that the best course of direction may be towards self-regulating as an industry. It is in the interest of the industry to protect and even enhance their creditability with the general public, by setting standards for product knowledge and securities

investment training, professional conduct guidelines and ensuring that Securities regulations are being respected with enforcement consequences if those standards are not met. This should include the development of a required Course and Certification that is relevant to the industry and the needs of the investors. **To that end, we recommend that Alberta lead the nation with a policy that serves the interest of investors by striking a committee of industry leaders to develop guidelines, training materials, certification standards for Exempt Securities with a primary focus on real-estate based investment industry.**

We have surveyed our top marketing reps and there is complete consensus of willingness and genuine interest to go through a formal training and certification program. They view this as a way to help them better serve their clients as well as to protect our industry of potential harm by way of unscrupulous brokers/marketers.

3. If the Commission insists on a Canadian Securities Course (CSC) requirement, then we believe that the current CSC should be upgraded, to include detailed knowledge of the Exempt Securities industry including a detailed knowledge of real-estate based investments. It has come to me as a surprise to meet people who have taken all the 'required' and 'recommended' courses to qualify as a 'Certified Financial Advisor', with expertise on mutual fund and stock trading etc., and the same have little to no working knowledge to assess the merits or the shortcomings of real-estate based Exempt Securities. In fact, the credibility of the entire mutual fund industry is put into question by the fact that these so called "Financial Planners" licensed to sell mutual funds are not permitted to market or even introduce to their clients real-estate based Exempt Securities. How does that serve the interest of investors?

If we are moving towards a requirement for a Canadian Securities Course then the course should acknowledge the validity and provide the knowledge to access the value of Exempt Securities including specifically real-estate based investments.

C) NATIONAL STANDARDS - A ONE WAY STREET? With respect to the goal or 'drive' towards a single Nation Regulator, it is our view, based on what changes have taken place to date (as well as changes that have not taken place in Ontario), that this National Standards goal is a one way street of change. At present, our investment products are only available to accredited investors in Ontario. Many hundreds of Ontarians, who happen to qualify as accredited investors, have taken advantage of investment opportunities with our sister company, Harvest Capital Management. These investors are all experiencing very good returns on their investments. How does 'not allowing eligible investors' or ordinary Ontarians to participate in such opportunities serve the interests of those investors?

Many investors from Ontario, who are otherwise very knowledgeable and desire to invest in real-estate, are being denied the same right to invest that others in Canada possess.

Even worse, they are being denied the same right to invest that those who happen to be wealthier than they are being afforded.


There is no indication of a change of policy in Ontario to line up their regulations with the rest of Canada, thereby allowing ordinary investors to enjoy the benefit and have the option to diversify their investment portfolio. If the national standards movement is only a one way street of change then it is not in fact 'national'. It appears to be more of an Ontario-centric movement towards change.

CONCLUSION: Given the reality that 45-106 (the present Alberta standards) has proven a success, it is our position that the reform proposals by the Canadian Securities Regulators should be rejected. Alberta should pursue a policy and a set of standards that is made in Alberta and made for Alberta investors. When and if Ontario moves towards allowing eligible investors the choice to invest in "Exempt Securities" a move towards national standards can then be reconsidered.

Until then, 45-106 is serving Alberta investors very well.

We thank you for taking the time to consider our comments and suggestions.

Sincerely,



Roy Beyer
Sr. Marketing Director
Foundation Capital Corporation