Frederick N. Margel
215 – 1080 Mainland Street
Vancouver, BCV6B 2T4
(604) 899-0805 fmargel@londonpier.ca

May 29, 2008

British Columbia Securities Commission
Alberta Securities Commission
Saskatchewan Financial Services Commission
Manitoba Securities Commission
Ontario Securities Commission
Autorite des Marches Financiers
New Brunswick Securities Commission
Registrar of Securities, Prince Edward Island
Nova Scotia Securities Commission
Superintendant of Securities, Newfoundland and Labrador
Registrar of Securities, Northwest Territories
Registrar of Securities, Yukon Territories
Registrar of Securities, Nunavut

Dear Sirs and Mesdames:

RE: Comments on Proposed NI 31-103 – Exempt Market Dealer

I operate in two provinces in the field of exempt securities, and anticipate having to register my firm as an Exempt Market Dealer under the proposed National Instrument.

I wish to add my voice to those who have argued against the inclusion of *cheques* in the category of client assets that, if handled by an Exempt Market Dealer firm, will result in that firm being held to several requirements. Those requirements, singly and in the aggregate, are onerous financially and administratively, especially when weighed against the client protection that anyone could expect them to possibly provide.

I also wish to comment on a few of the other requirements for this registration category, namely the requirements for insurance/bonding, relationship disclosure, account activity reports, proficiency requirements and registration in the same category in more than one province.

Minimum Working Capital of $50,000

As an Exempt Market Dealer, my firm would not be handling any cash or securities, opening any client trading accounts, or executing any trades on behalf of any clients. Although there may be some Exempt Market Dealer firms that will do some of these things, I know there are many firms that operate in the same fashion as my own. My firm would only receive possession of clients' cheques that are payable to issuers issuing exempt securities (or else payable to other firms registered in the appropriate category, such as another EMD), and those cheques are immediately deliverable to the payees.

In the real world, how could a client who has deliveredthis sort of cheque into possession of an Exempt Market Dealerfirm that operates this way be protected by virtue of some amount of cash the firm has in the bank at any point in time?

Surely $50,000 of working capital is not being seen as sufficient to cover instances of fraud, or other losses that could manifest in the case of a cheque that is only negotiable by a third party (e.g. a lost cheque). A dealer could lose a cheque, in which case it would be cancelled and replaced. A dealer could perpetrate a fraud, in which case $50,000 could not realistically be expected to cover the consequential losses, even it if was still in the firm's bank account by the time any order for compensation of victims is made.

If this working capital is about covering costs of auditing and administration, then is the auditor actually going to be expected to include those cheques in the audit? If indeed they are to be included in an audit, this is not going to cost anything resembling $50,000 in auditor's fees. My firm might handle on the order of up to ten such cheques in a month. All those cheques are copied to the file, recorded, and then delivered to the issuer or else to another firm that will also be an Exempt Market Dealer. In every case, the client has already madea decision to release funds to the issuer before signing the cheque and delivering it to our firm. We do not hold the cheques in escrow.

If a firm should need to wind down, it would simply complete delivery of the cheques to the payees, or else return them to the clients. That would require all of one week to accomplish.

It is notable that a law firm can handle, and control, a client's property, including cash, plus cheques and instruments, without any requirement for minimum working capital at all.

In any case, $50,000 is too much to be fair, and more than would ever be needed in relation to audit and any other administrative costs - I think so even in the case of actual funds being handled in client accounts, so *a fortiori* in the case of third party cheques.

Insurance Requirement

I fear that the insurance/financial institution bond requirements will be more onerous than the working capital requirement. Has anyone looked into the prospective underwriting requirements for an Exempt Market Dealer? Would insurers or financial institutions require even more working capital just to issue a policy or a bond? Do we know if they will be likely to issue these policies/bonds on reasonable terms at reasonable costs?

Relationship Disclosure

I believe that relationship disclosure is a good requirement, but I have a problem with the feasibility of 5.4 (3) (b).

> (b)a*discussion* that identifies which products or services offered by the registered firm will meet the client's investment objectives *and how they will do so*;

Emphasizing the words I have placed in italics, I suggest it is unreasonable to expect the registrant to make this statement in writing. It would not be practicable to prepare such a discussion in writing as a precondition to every recommendation. In any case, the registrant would be forced to make a statement that is so general and vague as to be meaningless, and to fluff it up with so much exculpatory language as to render it useless to the client. Let us dispense with it.

Account Activity Reports

The regular business of firms such as ours involves one or two transactions whereby an individual acquires securities of one or two issuers within a few days, followed by a period of no activity that almost always lasts at least one year, and most often two to four years. In that period, one or two other transactions of the same kind may take place. In an average year, the mean number of transactions per client will be less than 0.5, and range between zero and four.

The exempt security held by the client is virtually never sold; rather, the issuer winds up and distributes capital and earnings to the security holder, and the security is ultimately cancelled. Thus, the only transaction our firm is connected to is the acquisition of the exempt security.

In light of thisvery low rate of client account activity, reporting client account activity on a quarterly basis would be an absurd burden on firms like mine, and would be a waste of paper and postage, not to mention staff time. No client would expect to receive these statements, and none would benefit from them. An annual

statement of activity, coupled with the initial confirmation of trade, would be more than sufficient.

The firm is never making trades, nor handling funds or securities on behalf of clients. There is no "client account" *per se*. Perhaps there is an exemption already that I have overlooked.

Proficiency Requirements

I wish to point out that, as I understand it, the content of the CSC/CSE is irrelevant to exempt securities and real estate securities. I will not want my representatives to have to take a course that has no value to the firm or the firm's clients. Are there any exemptions that could apply? Or can we find or develop another course and exam that is indeed relevant?

Registration in More than One Province.

I hope that registration in the same category in more than one province will not mean cumulative annual fees or duplication of other compliance requirements and costs.

Recommendations

What I am proposing is do the following in order to alleviate the effects of these financial and administrative burdens in the particular circumstances I have described:

1. Exclude cheques to third parties from the definition of client assets, and either
2. Create some specific exemptions applicable to the situations I describe, or
3. Provide for regulatory discretion to order exemptions from these requirements in appropriate cases.

Respectfully submitted,

Frederick Margel, LL.B.