CROSBIE
A SPECIALTY INVESTMENT BANKING FIRM

May 29, 2008

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Registrar of Securities, Nunavut

RE: FURTHER COMMENTS– PROPOSED NATIONAL INSTRUMENT 31-103 (PARTICULARLY AS IT RELATES TO THE PROPOSED EXEMPT MARKET DEALER CATEGORY)

Crosbie & Company Inc. ("Crosbie") appreciates having the opportunity to provide further comments on the proposed National Instrument 31-103 ("NI 31-103").

We have reviewed the changes made in the revised draft of NI 31-103 dated February 29, 2008 (the "Revised Draft") and believe that these go a long way toward addressing many of the concerns that we raised in our letter to you dated June 17, 2007 (attached for reference).

However, we do have some additional perspectives as well as comments on a few specific areas of the revised draft that we would like to provide.

We hope that you find these thoughts helpful and constructive.

1) Regulation of M&A Activities

While NI 31-103 is clearly relevant to our corporate finance advisory services, there has always been some ambiguity in our mind as to whether it was also relevant for our M&A advisory activities, where we advise buyers and sellers of companies. A brief description of this aspect of our business is contained in our June 17, 2007 letter to you.

Based on comments made by representatives of the OSC and other provincial regulators at an information session that we attended last year, prior to our first submission of comments, we understood that it was not the intention of the regulators to capture the activities of M&A intermediaries such as Crosbie. However, when we read the current draft, it would appear that many M&A transactions (particularly those structured as share purchases or those involving vendor financing as part of the consideration) may in fact be captured.

Perhaps it would be good to have some explicit commentary that provides some guidance on this point to clarify it once and for all. We note that in the Companion Policy 31-103CP, the discussion relating to the application of the business trigger included discussion of a couple of specific business models. It may be helpful to expand this discussion to include some specific discussion on the applicability of NI 31-103 to advisory activity related to buy-side and sell-side M&A transactions.

2) Definition of Permitted Clients

The Revised Draft incorporates a new definition (the permitted client) as a trigger to exempt EMDs from certain requirements (i.e. those relating to know-your-client, suitability, account opening, and complaint handling) when a client satisfies one of the criteria.

Implicit in the drafting is a recognition that corporate and institutional advisory clients of firms like ours are very different from typical retail clients (by virtue of size and greater sophistication) and accordingly, that a different level of regulatory structure and protection is warranted. In addition, it recognizes that the transactions our clients are doing are not only larger but are market driven, heavily negotiated and involve also many other advisors that provide advice in the areas of tax, accounting, legal, pension, etc.

Conceptually, we think that the approach taken in the Revised Draft is potentially an excellent route to try and address the differences in business model and client base for firms such as ours.

However, we note that with the definition as currently drafted, only a very small percentage of our corporate and institutional clients would appear to be considered “permitted clients”, eliminating any practical effect or benefit from the mechanism. We assume that this was not the intention of the drafting. Absent any amendment to the definition, we will need to treat virtually all of our corporate clients in a manner similar to a retail “investor” client in terms of matters relating to know-your-client, suitability, account opening, and complaint handling. This would entail increased costs for us and result in little benefit from a regulatory protection standpoint.

To address this concern, we would suggest expanding and modifying the categories contained in the permitted clients definition. The following list is likely not exhaustive but includes specific examples of situations that should probably be captured in the definition:

(i) Companies with shareholders equity of less than $100 million.

Paragraph (o) establishes a threshold of $100 million in shareholders equity for corporate clients. This threshold is far too high. There are relatively few companies in this country with shareholders equity of greater than $100 million most corporate clients of LMD's would meet this threshold. We also think that this level is significantly out of line relative to the threshold for individuals contained in paragraph (m) – i.e. net financial assets of $5 million. Moreover, we would suggest that shareholders equity is probably not the best metric to use as a threshold in this definition, especially if there are not other thresholds.

We would suggest that the shareholders equity threshold in paragraph (o) be replaced with a requirement that the company exceed one of several threshold metrics. For example: companies that satisfy one of the following: total assets in excess of $10 million; total revenues in excess of $10 million in one of the prior three fiscal years; pre-tax profit in one of the prior 3 fiscal years of more than $1 million; or net assets in excess of $5 million.

(ii) Closely held companies with small shareholders.

In paragraph (n), reference is made to a private company that is "entirely owned" by individuals having net financial assets of $5 million or more. The requirement of being "entirely owned" by such individuals is problematic as many private companies have multiple shareholders where in many cases, they would not satisfy this high threshold. As a consequence, if we had a client company that was controlled by a very wealthy and sophisticated shareholder but had smaller shareholders, we would need to be treat it the same as if it were a retail client in terms of the requirements relating to know-your-client, suitability, account opening, and complaint handling.

We would suggest modifying the language in paragraph (n) to also include the concept of "control". Accordingly, as long as the company is controlled by an individual that satisfies paragraph (m), it would be considered a permitted client.

(iii) Private equity, venture capital and similar funds.

Many of our clients are significant capital pools that are structured in a variety of different ways. Many of these are known to have significant amounts of money available to invest and most also have high public profiles. Some are also non-resident to Canada. It is not clear where some of these entities might fall under the definition, particularly as their managers or general partners may not be registered.

Again, it strikes us that these should not be treated the same as retail clients in terms of the requirements for know-your-client, suitability, account opening, and complaint handling.

(iv) Public companies and their boards.

Our client base includes public companies, boards of these companies, income trusts, and trustees of income trusts. Again, it is not clear where they would fall under the definition as currently drafted. However, they are also entities which should be afforded a different treatment than retail investor clients in terms of the requirements for know-your-client, suitability, account opening, and complaint handling. I

3) Dispute Resolution Mechanism

We have a number of comments on the dispute resolution mechanisms proposed in NI 31-103. First, it seems unclear from the Revised Draft and related Companion Policy how it is proposed that this should work for a firm such as ours. In 5.29 (1), it is suggested that we must "participate in an independent dispute resolution service". We wonder how this is relevant to a firm such as ours that is purely an advisor, does not handle cash or securities, and is not dealing with retail clients or retail accounts. Does this mean we must impose this mechanism as well as the attendant cost on our corporate/institutional clients?

Second and more importantly, we think that this proposed mechanism is not warranted for our type of business on the basis that we are dealing with a sophisticated client base, always enter into legally binding engagement letters that document our mutual understanding and are both customized and negotiated (almost always with the assistance of the client's legal counsel) on a situation-specific basis.

We also have concerns that imposing the proposed dispute resolution service / requirement will make us uncompetitive when we are competing for business against advisory firms based in the United States that would not have similar requirements imposed on them.

As a solution, we would like to suggest that consideration be given to carving out this requirement for EMD's where they are dealing with permitted clients.

4) Financial Statements

The Revised Draft requires that EMD registrants provide certified financial statements within 30 days of quarter end. While the timeline has been extended, we think that these timelines remain somewhat tight.

For the record, we currently prepare monthly financial statements and often complete them within 30 days, including a partner review process. However, with the submission becoming a regulatory requirement, we would need to seriously consider bringing in additional resources to be sure that we have them prepared consistently within the required time-frame.

Given the potential costs of doing so (particularly relative to the potential regulatory benefits), we would like to suggest that firms that do not handle client cash and securities be permitted to provide statements 40 days after quarter-end.

We hope that the above comments and suggestions are helpful. Naturally, we would be pleased to make ourselves available to elaborate on, or to further discuss any aspect of this letter or issues that we have raised.

Yours sincerely,

Colin W. Walker
Managing Director