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cc: Cora Pettipas, NEMA (cora@nemaonline.ca)

Re: Proposed Changes to NI 45-106: Request for Comments

I appreciate the opportunity to provide input into the proposed amendments to National Instrument 45-106.

Background

Everest Development Group is an Edmonton-based land development group of companies and exempt market issuer. Current exempt market offerings include Limited Partnerships, Bonds, and a Mortgage Investment Corporation. **Our input addresses solely the proposed cap of \$30,000 for exempt market purchases under s2.9 of NI 45-106.**

Sincerely,

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1. We feel this unfairly singles out the Exempt Market, and places a "stigma" on our products.

By comparison, an individual can open a self-directed trading account and put all of his life savings into a penny stock. An individual can walk into a casino and put all of his life savings on Red 23 at the Roulette table. The regulators have no problem with either of those scenarios, yet it seeks to place a chokehold on our investments?

2. The governing principle of the exempt market is that investors are taking on the risk (and they sign an acknowledgement to do so). Investors receive comprehensive offering memoranda - many offering memoranda are more detailed than prospectuses. Investors are further required to sign very starkly worded "risk acknowledgements". Finally, the registered agents and the EMDs add layers of accountability not found in other investments. We feel this proposed cap is contrary to the intent of the exempt market.
3. A lot of people have made a lot of money in the exempt market. Exempt market investments are, for the most part, devoid of the ridiculous fees that mutual funds charge (www.moneysense.ca/invest/canadian-mutual-fund-investors-wake-up). Canadians pay some of the highest management expense ratios (MERs) in the world. According to a CBC report, the average MER of 2.5% can erode 50% of the potential value of a fund over a 25 year duration (www.cbc.ca/news/canada/banks-misleading-clients-on-mutual-funds-1.1415027)

By restricting only \$30,000 into the exempt market, Canadians will be forced to put more money into mutual funds, thereby exposing them to higher MER fees.

4. A defining characteristic of exempt market products is that they are not connected to the stock market. Reducing the amount of exposure to exempt products will in fact increase Canadian's exposure to the stock market via mutual funds. The stock market has been artificially high due to the Fed's policy of quantitative easing and by large activist investors.
5. There does not exist any concrete data to show that the exempt market is any riskier than other investments (especially post-31-103). No studies exist on the returns that have been generated in the exempt market when compared to other comparable asset classes. This supports the notion that the regulators are unfairly singling out the exempt market based on bias rather than facts.

If the CSA has studies, data, or evidence to prove that the exempt market is riskier than other investments (including stocks, mutual funds, OTC, ETFs, etc) I would invite them to share that data with industry participants.

6. The policy has the potential to undermine public confidence in the securities regulators. For example, suppose an individual wanted to invest \$100,000 in an exempt market product, but only could invest \$30,000. The individual was made aware of all the risks, was able to withstand the illiquidity, and met all the criteria under s2.9 of National Instrument 45-106. That product delivered a return of 95% over 4 years. The investor made a profit of \$28,500, when he could have made a profit of \$95,000. The regulators forced him to lose out on \$66,500 of profit. Stories like this have the potential to cause public unrest and a general sense of frustration with securities regulators.



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7. The policy may not withstand a court challenge. It is unclear whether the securities regulators have the authority to dictate caps on the amount of funds investors are able to put into a particular asset type. Such a policy may in fact be unconstitutional.

Should there be a court challenge of this limit, and especially should the regulators lose, it would further erode and undermine public confidence in the securities regulators. The perception would be that the regulators have no ability to stop fraudsters like Ron Aitkens; instead they direct their energies to making life more difficult for honest participants and their investors.

8. It will increase administration costs for issuers, EMDs, and trust companies, as the amount of work required for an investment is the same regardless of the investment size. By lowering the maximum size of an investment, this increases the number of total investments required to achieve a maximum offering (under s2.9). These costs will ultimately come out of the investors' pocket.
9. The policy will do nothing to stop fraudulent or ponzi-scheme investments. As we have seen with high-profile frauds like Concrete Equities and the Ron Aitken investments, fraudsters will pull every lever at their disposal to raise funds. They may bypass 45-106 reporting all together, or devise methods to use other exemptions under 45-106.
10. It undermines 31-103 and the system of registration. If a registrant is not permitted to assess for themselves concentration risk, then what is the point of registration?
11. The ultimate - and noble - goal of reducing frauds and investor losses in the exempt market is one that should be pursued collaboratively with industry participants, and with constructive solutions. A blanket policy of reducing the amount that anyone can invest is not collaborative or constructive. Fraudsters will still cheat people out of their money, however innocent and sound investment issuers will lose out. This is punishing all actors for the bad actions of a few.

I would propose a collaborative, industry-wide approach to seek solutions from all exempt market participants and their regulators to generate policies and solutions to reduce fraud and investor losses. It is in the interest of all of us that frauds and losses are minimized.

I thank you for your time and consideration, and look forward to moving forward with constructive dialogue and solutions.