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**Via Email**

**Attention:**

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**Re: CSA and OSC Proposed Amendments Relating to the Offering Memorandum Exemption**

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I am writing to comment on the proposed amendments to NI 45-106 by “Participating Jurisdictions” of the Canadian Securities Administrators and the Ontario Securities Commission as set out in the Multilateral Notice of Publication dated March 20, 2014. Reference herein to “CAS” shall be to all of the Participating Jurisdictions and the OSC.

I am a solicitor practicing primarily securities law in Calgary, Alberta. Over the past 9 years my office has been involved in the preparation of over 150 exempt market offerings.

In general I am in support of many of the recommendations made within the proposal though I suggest that further consideration be given with respect to the proposals which I will provide further comment on below.

I believe that two of the proposals being tabled, the \$30,000 limitation per year on exempt market investments per investor and the \$10,000 limit per year being placed upon non-Eligible investors (collectively the "Investor Limitations") are misguided and will create material adverse consequences, negatively affecting not only investors, but exempt market dealers and the issuers who rely on the exempt market as their only avenue in raising investment capital.

The introduction of the Offering Memorandum exemption in Ontario has the potential to exponentially increase funds raised within the exempt market throughout Canada. However, the Investor Limitations will effectively neutralize the benefit of the opening of the Ontario market and severely restrict access to capital by all exempt market issuers throughout our country.

While I don't purport to speak for the exempt market issuers, the Investor Limitations, in my opinion, would have the effect of driving many of the exempt market dealers ("EMD") out of the marketplace. I don't believe that the EMD's would be financially capable of continuing to carrying on business if the Investor Limitations is invoked. If EMD's are eliminated from the distribution of exempt market securities, there will be no groups that will step in to fill this void. The IIROC firms already view the exempt markets space as cumbersome and expensive to operate within. As such, I believe an unintended consequence of the Investor Limitations would be reduce access to the exempt market to issuers and would potentially eliminate the exempt market as an investment option to the investing public.

Obviously, the underlying rationale in implementing the Investor Limitations is based on the CSA's desire to protect the investing public. While this is certainly a meritorious undertaking, it would seem that the CSA is choosing to implement Investor Limitations on the exempt market while ignoring the fact that no such limitation exists within the public market. The chances of issuer fraud, mismanagement and investor losses in public issuers is just as great as in exempt market issuers. In my opinion, the exempt market is being unfairly focused upon, perhaps because it is in its infant stages of development and has not yet achieved a similar standing as the IIROC space in the eyes of the CSA. It seems to me, however, that the CSA should be insuring that the steps that it takes with respect investor protection in the exempt market space does not result in effectively throwing the baby out with the bath water which, in my opinion, would be the result of the implementation of the Investor Limitations.

I believe the CSA has failed to take into account the more salient points with respect to the proposed Investor Limitations including the following:

- The Limitations do not take into account the investors who may be entering and exiting exempt market investments in the same year. In addition, where investors successfully exits an investment, that investor may well be prohibited from investing its previous capital as well as its return in a new investment as a result of the Investor Limitations.
- The Investment Limitations also do not take into consideration that exempt market investors may not invest regularly, due to personal circumstances, and as a result may have exigible capital available for investment in one year but not in the next. The effect of the Investment Limitations would be to preclude investors from making investment decisions based on personal circumstances with the net result that the investor may not be able to avail himself of current market opportunities allowing for appropriate diversification of his investments.
- The Investor Limitations are an egregious breach of the constitutional rights afforded to citizens of Canada. I do not believe the implementation of these Limits would survive a Charter of Rights challenge. While exempt market investors deserve protection, that protection should not override their personal rights and freedoms with respect to investment choices and especially not when the protection being proposed is not equally mandated throughout the whole capital market (ie. no such limitations are being placed on IIROC investments).

The result of the Investment Limitations upon exempt market issuers is obvious, most issuers will not be able to raise any significant amount of capital within the Canadian capital markets and will be left with little if any

financing alternatives. Given the size to which the exempt market has grown in Canada, the financial impact of this circumstance will be felt on a national economic level.

The exempt market is still in its early stages of growth. The regulations governing this space require constant monitoring by industry, regulators and the public with a view toward creating a market that is fair to both issuers and investors and provides appropriate levels of investor protection. Over regulation, however, is not the answer to correct perceived deficiencies within the exempt market or any other market for that matter.

While I understand that the concept of investor protection is of paramount concern to the CSA, I believe that the negative consequences of adopting the Investor Limitation have not been thoroughly considered in developing the proposal. I would hope that further consideration will be given to the points that I have raised herein as I am sure that I am not alone in expressing these sentiments.

Yours truly,



**CRAIG L. BENTHAM**

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