Bancorp Financial Services Inc.

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The Secretary
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and

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The Honorable Michael de Jong
Minister of Finance
PO Box 9048
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Victoria BC, V8W 9E2

Re: CSA Proposed Amendments Relating to the Offering Memorandum Exemption

We are writing to comment on the OSC and ASC proposals for NI 45-106 even though this is not a current proposal of the BCSC. We have been affected by the current rules in Alberta and we would be seriously and negatively affected to the point we may not be in business if the same rules were in effect in BC. We also understand one of the goals of the provincial securities regulators is to harmonize regulatory requirements between provinces and that there is a proposal for a joint BC and Ontario securities regulator so we are very concerned that the proposal will end up here in BC as well. We also hope that our concerns and comments as a long term MIC and syndicate mortgage operator will provide some useful information.

Bancorp Financial Services Inc. (BFSI) is a BC based company whose sole business is managing Mortgage Investment Corporations (MICs) and private syndicated mortgages. We have been in the mortgage business since 1976 and have been operating under our current format exclusively since 1997. We limit our mortgage business to BC and Alberta and we are licensed under the Mortgage Brokers Acts in both BC and Alberta.

Our investor base in the MICs is a combination of eligible investors and accredited investors and we utilize the OM exemption for all investors in our MICs together with the risk acknowledgement forms. Our investors in the syndicated mortgages are accredited investors (not MA accredited) and BFSI staff and directors. We raise capital directly for both of the MICs we currently manage and our syndicated mortgages under BC Instrument 32-517 in BC. We have not raised capital in Alberta at all since the exemption from dealer registration was removed, it is our understanding this included both eligible investors and accredited investors.

The returns on our MICs are very stable but they are not high, the 6-9% range, we attract conservative investors interested in stable income returns. The market fees similar to IPO fees

that are required to access the EMD market have so far been much too high for us to pay and stay in business and our investors do not want to pay as it would greatly reduce their yield and make our funds uninteresting to them. The typical EMD product is a new issue in the exempt market akin to new issues in the public markets with higher costs and fees and many do not include the redemption rights within MICs. We have audited statements, we have a long business history, we have identifiable assets on our books secured on real estate, we have redemption rights and a history of honouring them and we have a good working relationship with our investors. We know of one smaller MIC who has exclusively used EMDs for the capital raising for the past 3 years and they claim they cannot afford to stay in business on that basis. We know of another larger MIC who has become an EMD to issue their own shares and that seems to be working but requires a larger size and is prohibitive for smaller MICs.

In our view MICs should have an exemption from the dealer registration requirements as long as they are registered under the appropriate mortgage brokers' legislation. The current exemptions we operate under in BC should become the norm for MICs and syndicated mortgages subject to NI 45-106 and subject to appropriate rules under the applicable mortgage acts. MICs are much different than start-ups or other SMEs without an established proven business. In essence we strongly believe there are different categories of exempt market product that need to be treated differently. Investors in MICs are well protected in making their investment decisions through the information contained in an OM which include audited financials, most MICs already follow continuous disclosure including quarterly financial statements (we agree this should be a requirement) and the revised form of risk acknowledgement directly highlights potential risks. With this disclosure, audited information about the issuer and the risk acknowledgement, investors have sufficient information to make their own decisions and should have the choice of investing directly with a MIC or going through an advisor if they choose to do so just as an investor has the choice of buying public shares through an on-line no advice program or hiring a dealer to represent them.

In the end if we are required to issue our MIC shares through an EMD then we should have the ability to register as an EMD to market our product as all EMDs should have. Any conflict of interest issues can be dealt with as a specific disclosure. Every EMD is subject to the same obligations, standards, education and responsibilities as any other registrant. Just because the EMD is unrelated does not take away the risk of poor advice and in some ways creates the risk that good operators with proven and identifiable business models like MICs with lower returns than start-ups and other SMEs typically offer and less ability to pay higher fees will be ignored and will not be able to raise capital. No matter what the profession and rules there can be bad operators but for the most part companies take their responsibilities seriously and we see no reason to deny the right of issuers to sell their own product if they take the time and effort to qualify and perform as an EMD. There are many, many examples of other licensed companies under IIROC and other market segments selling their own product and while the licensing may be different the principles remain the same and for the most part all involved take their responsibilities seriously. But if the requirement of using an EMD is established and even if the issuer can be their own EMD, the smaller MICs who perform a very valuable function for investors and borrowers, particularly in smaller communities, will likely not be able to stay in business given the costs associated with being an EMD and the higher costs of using an EMD and actually getting on their shelf for distribution.

With respect to the $30,000 limit on exempt market investment for eligible investors, this would be a extremely negative restriction on the ability of most exempt market participants to raise necessary capital and more importantly it would seriously limit investors' rights and would create a barrier that may be totally inappropriate for most investors. There is no typical investor, each

has their own needs and wants, their own risk tolerance and their own goals. Some are younger, some are older, some have less assets some have more. When you make an exempt market purchase you sign a very strong risk acknowledgement saying you may lose all your investment. Do you sign a risk acknowledgement that I may go bankrupt when you max out your credit cards, when you mortgage your house for spending money do you sign an acknowledgement that you may lose your house. Does a buyer have to meet an asset or income test by legislation to buy a certain value of car? The risk acknowledgement is already a very strong document coupled with a detailed OM and in a MIC's situation annual audited financial statements that provide more than enough for an investor to consider the investment they are considering. It may be different for start-ups or other less established SMEs who have less of a track record, assets that are identifiable and solid financial records but that is another reason that one rule does not fit everyone and that there should not be limits. There are enough cautions and disclosure for the investor to make up their own minds as to what is appropriate for them.

Another concern we have is around the accredited investor category. Under 45-106 an accredited investor is exempt from prospectus requirements but there is no exemption from dealer registration when dealing with an accredited investor. In our view an accredited investor should be able to make an investment in the exempt market directly with an issuer without the need to go through a dealer. To require otherwise defeats the entire concept of an accredited investor. There is also the risk acknowledgement they must sign and perhaps there should be a waiver of using a dealer similar to what a $5,000,000 net assets accredited investor can sign with a dealer if he does not want to complete the KYC forms.

With respect to our business of syndicated mortgages we believe that NI 31-103 should be amended to remove 8.12 (3) so that syndicate mortgages are exempt from dealer registration as long as the person involved is registered under the mortgage broker legislation of that jurisdiction and the investor is an accredited investor. The combination of section 35.4 in the Ontario Securities Act and the accredited investor exemption under NI 45-106 achieve this in Ontario but not in Alberta which has significantly reduced our business in Alberta with Alberta accredited investors. With respect to the definition of an accredited investor we agree with the proposed changes to the accredited investor rules, specifically the MA exemption be limited to companies and not be available to individuals.

When we offer interests in syndicated mortgages we are offering an interest in land secured by a mortgage and the Mortgage Brokers Act is the appropriate place to govern this type of activity. Until recently we had long term accredited investor clients in Alberta who participated in syndicated mortgages with us for over 10 years. But with the changes in Alberta that now require the accredited investor to go through an EMD we have lost all of those investors. Basically they want to deal directly with their mortgage investments and are not prepared to pay the fees or take the time involved in working through an EMD. In BC we are still operating under the BC Instrument 32-517 and if that was changed to the Alberta rules we expect our mortgage syndication business would virtually disappear. We would hope that the current rules in Ontario remain for accredited investors investing in syndicated mortgages and that all provinces adopt the same rules for accredited investors and syndicated mortgages. Also, given that MICs are a pool of mortgages, we also believe accredited investors should be able to invest in MICs without the need for an EMD intermediary. Again we have quite a few accredited investors in our MICs and they would be extremely reluctant to pay EMD fees or go through the process.

All of our comments above are specifically related to the MIC and syndicated mortgage business. We don't work with start-ups or SMEs so we really cannot offer much informed comment as it relates to those business models. But we do believe that our business is much different than the typical start-up or SME the regulations are directed to. In many ways MICs disclose much the same information as public companies do but in the private markets. We have a defined business plan, we have a history of operations, we provide audited statements annually, quarterly interim statements and practice continuous disclosure. With these requirements, the guidance and requirements of NI 45-106 with respect to OMs and the risk acknowledgement forms we believe that issuers of shares in MICs should be exempt from dealer registration.

If we are required to use EMDs then we as issuers should be able to take all the required education to become an EMD and sell our own product as long as we comply with the obligations and duties of an EMD and provided we disclose the potential conflict of interest. The requirement of an EMD should only be applicable to eligible and ineligible investors, accredited investors should be able to deal directly with issuers but that could include a requirement that they sign a waiver form stating they do not want the advice of a dealer.

Finally syndicated mortgages should be governed by the Mortgage Brokers Act as they already are and excluded from dealer registration requirements if the investor is an accredited investor.

In our opinion the net effect of the proposed changes will be the loss of a large number of operating MICs, especially the smaller MICs in smaller communities that perform a valuable function in the economy for investors and borrowers, not to mention the employment. The intentions of investor protection are important but the rules are already there for MICs and syndicated mortgages and new rules are not going to weed out the bad apples, they are going to weed out good operators who take their business and obligations seriously.

If you would like further elaboration on my comments, please feel free to contact me.

Regards,

Doug Bentley
President
Bancorp Financial Services Inc.