

September 27, 2016

Ontario Securities Commission
20 Queen Street West, 22nd Floor
Toronto, ON M5H 3S8
Attention: Josée Turcotte, Secretary

To Whom it May Concern,

RE: CSA Consultation Paper 33-404 Proposals to Enhance the Obligations of Advisors, Dealers, and Representatives towards their Clients

DIAM Capital Markets Inc is boutique exempt market dealer (“EMD”) that focuses on private real estate investments. Our priority is to have a finite number of products on our shelf that our company and Dealing Representatives (“DR”) support and feel confident in offering. By having a boutique EMD, we look to keep our overhead and costs low and function in the most cost effective, compliant manner possible.

The relationship between issuer and dealer is a unique one on the exempt market side and very different from the public market. Issuers seek EMD’s to offer their products to raise capital for their companies whereas in the public markets it’s the other way around as DR’s seek out issuers/companies that they believe will make money for investors.

Since EMD’s focus on ONLY exempt market products and IIROC dealers have a more holistic process, it does not make sense to have the same requirements for both types of dealers. The exempt market platform specializes in only one type of product while public platforms as well as mutual fund dealers have a larger product market to choose from. Often times investors come to EMD’s to seek out exempt market products, in particular accredited investors.

EMD business is typically a transactional business while IIROC dealers focus on a holistic approach to their investors. The assets are not held in custody but held at the issuer and once the transaction occurs the EMD is no longer involved. All further information about the investment is given directly to the investor by the issuer including annual statements etc. To uphold the requirement for the EMD to have the same responsibility as an IIROC dealer is not prudent. The relationship between an IIROC dealer and an investor is very different from the relationship between an EMD and an investor. With this in mind, there should be different requirements for each type of business. Our business model involves building relationships and raising capital for MIC’s real estate related assets and other well established businesses for the purposes of generating cash flow and/or long-term capital appreciation.

There are two areas that our firm feels very strongly about and we would like to comment on. The areas that we want to comment on are Know Your Client and Suitability. Below is a summary of our comments targeting the respective questions for these 2 sections in the Consultation Paper.

Know Your Client

The EMD space is typically a transactional based business model whereby issuers come to dealers to sell their products to raise capital and dealers seek out clients specifically for the exempt market products. In order for this market to continue to exist and support the SME's certain concessions need to be made and understood. Such as how business models are run, resources available to dealers and the educational requirements for the positions within the dealer.

***Question 4:** Do all registrants currently have the proficiency to understand their client's basic tax position? Would requiring collection of this information raise any issues or challenges for registrants or clients?*

In order to comply with NI 31-103 sec 3.9 Registration Requirements, to be licensed as a DR for an EMD, the ONLY educational requirement is successful completion of the Exempt Market Products Exam offered by IFSE or the Canadian Securities Course Exam offered by the Canadian Securities Institute. There is no additional educational requirement of any kind and the information in these courses does not adequately prepare DR's to be able to ask for and apply any sort of tax information or guidance. Neither course provides the DR with the ability to speak to client's on tax matters. DR's are NOT permitted to provide tax advice or guidance if they are not registered to do so. If the DR is asking for tax information from potential clients, they need to advise the client why they are obtaining the information and how it will be used. Since DR's are not licensed to give advice on tax they would not be permitted to use the information hence it does not make sense to request this information from clients.

Investors, in particular accredited investors, are not prepared to provide their tax information to a DR when they have tax accountants and specialists to deal with those issues. There are a number of ways which tax accountants deal with taxation issues for their clients and investors would not be willing to provide DR's with any information associated with this. When they come to an EMD they are looking explicitly for exempt market product and NOT tax advice.

***Question 54:** To what extent should the KYC obligation require registrants to collect tax information about the client? For example, what role should basic tax strategies have in respect of the suitability analysis conducted by registrants in respect of their clients?*

In order to give proper knowledgeable and experienced tax advice an individual needs to have the designation of a CFO, CFA, CPA or ChFC. In addition to the designation, it is important that the individual that is certified or chartered has been certified by a professional body and has met that body's standards. There is currently there is no requirement for DR's to have these designations and associations with a regulatory body to give tax advice if they are selling securities. Asking DR's to incorporate tax strategies in the suitability analysis without the applicable education puts them in a position of risk.

In the securities industry DR's specialize in giving securities advice, which is why the courses and education required is centered on securities. We train them to understand all the securities that are in the market in order to be able to advise clients accordingly. Their focus is on securities, the

characteristics of each investment, how to understand a client's profile and apply suitability when considering recommendations to securities. They do not focus on tax and tax implications of investments and advise investors to speak with a tax specialist prior to investing.

Question 6: Should the KYC form also be signed by the representative's supervisor?

In the EMD space, the supervisor should not sign off on the KYC form. In order to sign off on KYC forms and documentation certain training and courses should be completed that are currently not required or available at the EMD level. The courses that are currently offered/required in the EMD space are not sufficient to give supervisors of representatives a comprehensive understanding of the process and requirements of supervision. Understanding what to look for and the responsibility/liability associated with signing off on KYC forms should not be placed on the supervisor for the DR under the current requirements. The education/course(s) required to be a DR for an EMD are not sufficient to prepare supervisors as there is currently no educational requirement to supervise DR. The ability to fully understand what to look for and how to review documentation is not something where training is provided for. If supervisor's are to sign off on the dealing representative KYC forms significant changes would need to be made that are currently not in place. At this time, under the current requirements the supervisor should not sign off on the KYC forms.

Question 56: Should additional guidance be provided in respect of risk profiles?

The removal of "risk tolerance" and the introduction of "risk profile" is not something that has been explained fully and the process for how these are to be integrated and used vague at best.

One of the biggest issues on the exempt market side has been that the regulators consider ALL exempt market securities high risk speculative investments. There are products on the exempt market side that are not high risk and speculative. Products need to be considered independently of one another, on their own merits and rated for risk accordingly. To put all exempt market products in one category is equivalent to indicating that all bonds are low risk which is not the case.

There needs to be further guidance on the breakdown of the risk profiles on the exempt market side to include income, growth and balanced exempt market products along with considering some products in the medium category and not having all securities considered high risk. There needs to be guidance that permits exempt market products to include medium risk profiles, income, growth and balanced investment objectives and not just speculative. The exempt market has a wide variety of products that need to be considered and addressed in the risk profiles and guidance

SUITABILITY

Once you complete the KYC information and it is time to work on the Suitability review for an investment there are a number of factors to consider; a person's age, marital status, income, net worth, financial assets etc. These are all a part of the KYC process and the interpretation of them is an important part of the process for suitability.

One of the most significant issues that the EMD's have is that the regulators view ALL exempt market products as speculative high risk investments. Often times investors seek exempt market products for income sources that they have not been able to attain on the public market side. There is tremendous opportunity for investors to invest in exempt market products and the regulators need to be more objective and consider each security on its own merits and allow dealers to review products and ascertain how to rate them and not automatically assume that lack of liquidity equals a speculative high risk investment. There are many medium risk investments available on the exempt market side and appropriate KYP needs to be completed and not automatically assume that all products are high risk.

Question 16: *Do you agree with the requirement to consider other basic financial strategies?*

In the exempt market side of the business the DR's are only registered and educated to give advice on exempt market products. To require them to be knowledgeable and advise investors on financial strategies is not relevant to the business that they focus on. Often times Investors come to a DR and investors are not open to disclosing all of their investments and current financial strategies as they have other professionals that are licensed and certified to do those aspects of their business. To require DR's to look at financial strategies when looking at the client's investment puts both the DR and investor at risk as the DR does not have the sufficient knowledge or education to consider other financial strategies. Investors can assume when you ask questions on tax and financial strategies that you have the knowledge to take the information and apply it since you are registered and asking the questions.

Question 18: *Should there be more specific requirements around what makes an investment "suitable"?*

The determination of whether a product is suitable or not is subjective based on a number of factors. One of the issues in terms of suitability is how the regulators are requiring exempt market securities to be rated in terms of risk. There needs to be a change in the regulators perspective regarding how they view exempt market products. There are a lot of good quality medium risk investments that provide income streams to investors that should not be considered speculative and high risk investments. In order to determine what products are "suitable" for a client on the exempt market side there first needs to be a change on how products are viewed before we can create more specific requirements on what makes a product "suitable".

Small boutique dealers are looking to have a finite shelf offering unique products to compete in the market place on their own terms. The suitability of the products on their shelf will need further guidance.

The regulators are looking to change the term "risk tolerance" to "risk profile" by the way that the paper has been written. How the risk profile will be incorporated in terms of the client's ability to assume risk is something that will directly affect suitability. This will need significant clarification and guidance on how it is incorporated into suitability. The regulators are asking for DR's to understand ALL the products on the shelf as opposed to the ones that they want to offer and create a suitability review based on ALL the products on the shelf by the dealer. This is a tremendous task considering that not all DR's are

educated equally and some are more sophisticated and want to offer more sophisticated products to accredited investors that understand these products.

Considering all of the above, more guidance should be outlined on what makes an investment suitable but there should not be further regulatory requirements.

Question 63: Should we provide further guidance on the suitability requirement in connection with ongoing decisions to hold a position?

In the exempt market space dealers do not typically custody assets and also have more of a transactional business model. The investments that are purchased by investors through an EMD are long term investments with limited liquidity. Investors go through an initial suitability review with the understanding that the product is a long term investment that is difficult to get out of. When the reviews are completed, reviewing the investors assets to confirm that they do not

EMD's do not hold positions and the securities that we recommend are buy and hold strategies with limited liquidity. Due to the nature of the types of investments that EMD's recommend and the lack of liquidity, recommending when to "hold" a position becomes irrelevant.

Question 64: Should we provide further guidance on the frequency of the suitability analysis in connection with those registrant business models that may be based on one-time transactions? For example, when should a person or entity in such a relationship no longer be a client of the registrant for purposes of this ongoing obligation conduct suitability reviews of the client's account?

EMD's typically run transactional business models based on the types of securities they offer and the business's they deal with. Since the investments that DR's offer to investors are long term hold positions there is not the turnover of assets that is available on other platforms. The availability of funds for investing is not easily accessible once it has been invested and new funds are available frequently, hence the transactional business model.

Based on how the EMD business is run, the ongoing obligation to conduct suitability reviews is not applicable to the EMD transactional business model. Additional guidance on how the regulators view the transactional business model and when the ongoing obligation to conduct suitability reviews of client accounts is no longer applicable would be practical.

If you have any questions please let us know.

Kind regards,

DIAM Capital Markets Inc.