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February 27, 2013

VIA E-MAIL

Mark Wang
Manager, Legal Services
Capital Markets Regulation
British Columbia Securities Commission
701 West Georgia Street
Vancouver, British Columbia V7Y 1L2

Dear Mr. Wang:

Re: Notice and Request for Comment – Proposed Revocation of BC Instrument 32-513 Registration Exemption for Trades in Connection with Certain Prospectus-Exempt Distributions and BC Instrument 32-517 Exemption from Dealer Registration Requirement for Trades in Securities of Mortgage Investment Entities (Revocation of the NW/MIE Exemptions)

This submission is made by the Exempt Market Dealers Association of Canada (**EMDA**) in response to the request for comments published by the British Columbia Securities Commission (**BCSC**) on January 3, 2013 in connection with the Revocation of the NW/MIE Exemptions.

WHO IS THE EMDA?

The EMDA is a not-for-profit association founded in 2002 to be the national voice of exempt market issuers, exempt market dealers (**EMDs**) and participants in the exempt market across Canada. The EMDA plays a critical role in the exempt market by:

- assisting its hundreds of dealer and issuer member firms/individuals to understand and implement their regulatory responsibilities;
- providing high quality and in-depth educational opportunities to exempt market participants;
- encouraging the highest standards of business conduct amongst its membership across Canada;
- increasing public and industry awareness of the exempt market and its role in the capital markets;
- being the voice of the exempt market to securities regulators, government agencies, other industry associations and the capital markets;
- providing valuable services and cost-saving opportunities to its member firms and individual dealing representatives; and
- connecting its members across Canada for business and professional networking.

Additional information about the EMDA is located on our website at: www.emdacanada.com.

Your Industry Voice Coast to Coast

First Canadian Place, 100 King Street West, Suite 5700, Toronto, ON M5X 1C7
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WHO ARE EXEMPT MARKET DEALERS?

EMDs may act in two primary capacities in the capital markets: (a) as a dealer or underwriter for any securities which are prospectus exempt; or (b) as a dealer for any securities, including investment funds which are prospectus qualified (mutual funds) or prospectus exempt (pooled funds), provided they are sold to clients who qualify for the purchase of exempt securities. The qualification criteria for exempt purchasers and exempt securities are found in National Instrument 45-106 *Prospectus and Registration Exemptions*.

EMDs are fully registered dealers who engage in the business of trading in exempt securities, or any securities to qualified exempt market clients. EMDs are subject to full dealer registration and compliance requirements and are directly regulated by the provincial securities commissions. The regulatory framework for EMDs is set out in National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations (NI 31-103)* which applies in every jurisdiction across Canada.

EMDs must satisfy the same "Know Your Client" (**KYC**), "Know Your Product" or (**KYP**) and trade suitability obligations as other registered dealers which are IIROC or MFDA members. NI 31-103 sets out a comprehensive dealer regulatory framework (substantially similar for all categories of dealer, including investment dealers) which requires EMDs to satisfy a number of regulatory obligations including:

- educational proficiency;
- capital and solvency standards;
- insurance;
- audited financial statements;
- know your client;
- know your product;
- trade suitability;
- compliance policies and procedures;
- books and records;
- client statements;
- trade confirmations;
- disclosure of conflicts of interest and referral arrangements;
- complaint handling;
- dispute resolution;
- maintenance of internal controls and supervision sufficient to manage risks associated with its business;
- prudent business practices requirements;
- registration obligations; and
- submission to regulatory oversight and dealer compliance reviews.

EMDs may focus on certain market sectors (*e.g.*, oil and gas, real estate, mining or minerals, technology, venture financing, etc.) or may have a broad cross-sector business model. EMD clients may be companies, institutional investors, accredited investors, or eligible investors who are qualified to purchase exempt securities pursuant to an offering memorandum.

EMDs provide many valuable services to small, medium and large businesses, investment funds, merchant banks, financiers, entrepreneurs, and individual investors, through their ability to participate in the promotion, distribution and trading of securities, as either a principal or agent.

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EMDA COMMENTS ON THE REVOCATION OF THE NW/MIE EXEMPTIONS

The EMDA supported the implementation of NI 31-103 and the creation of the exempt market dealer category of registration. The regime was needed to protect investors, rid the industry of fly-by-night operators, and give credibility to the issuers and dealers that serve investors well. A modernized, streamlined and harmonized regime was the goal expressed by the regulators and welcomed by the EMDA. There were concerns raised by the EMDA and other commentators that a single national instrument would be interpreted in 13 different ways. That concern turned out to be well-founded when blanket orders were issued by the BCSC and other regulators creating the NW Exemption and subsequently the MIE Exemption.

The discordant regulatory regime resulting from these orders led to confusion amongst issuers and dealers, particularly those registered in multiple jurisdictions. It also created costs for different dealers that based their business models on growth through consolidation in Western Canada. Moreover, these exemptions created a gap in investor protection that has since been recognized.

While we credit the BCSC with the proposed rescission of the blanket orders, the EMDA would have preferred a single co-ordinated approach by all the jurisdictions that adopted the NW Exemption. The elimination of the blanket orders will likely lead to improved investor protection but there will be little immediate effect on harmonizing the regulatory regime for the exempt market.

The full implementation of the exempt market dealer category will have a significant impact on the exempt market participants in British Columbia. Accordingly, we believe the BCSC should include a reasonable transition period to allow these market participants the opportunity to adapt to the new regulatory regime.

EMDA RECOMMENDATIONS

The EMDA recommends:

1. the BCSC revoke the NW/MIE Exemptions and provide an appropriate transition period; and
2. the BCSC engage in a dialogue and share its research with the remaining jurisdictions who have adopted the NW Exemption to reconsider their current blanket orders based on the approach taken by the BCSC.

* * *

The above comments are respectfully submitted by the Board of Directors of the Exempt Market Dealers Association of Canada on behalf of its membership.

We thank you for the opportunity to provide you with our comments on the Revocation of the NW/MIE Exemptions and welcome any opportunity for further dialogue on this issue.

Yours very truly,

The Exempt Markets Dealers Association of Canada

Per: 

David M. Gilkes
Vice Chair

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