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**RE: BC Notice 2013/01 – Proposed Revocation of BC Instrument 32-513 (the Northwestern Exemption) and BC Instrument 32-517 (the MIE exemption)**

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FAIR Canada is pleased to offer comments on the notice and request for comment on BC Notice 2013/01 (the “**Notice**”) issued by the British Columbia Securities Commission (“**BCSC**”) regarding the proposed revocation of BC Instrument 32-513 *Registration Exemption for Trades in Connection with Certain Prospectus-Exempt Distributions* (the “**Northwestern Exemption**”) and BC Instrument 32-517 *Exemption from Dealer Registration Requirements for Trades in Securities of Mortgage Investment Entities* (the “**MIE Exemption**”) (together, the “**Exemptions**”).

FAIR Canada is a national, non-profit organization dedicated to putting investors first. As a voice of Canadian investors, FAIR Canada is committed to advocating for stronger investor protections in securities regulation. Visit [www.faircanada.ca](http://www.faircanada.ca) for more information.

**FAIR Canada Comments**

- 1.1. FAIR Canada fully supports the BCSC’s proposal to revoke the Northwestern Exemption and the MIE Exemption. FAIR Canada does not believe it is appropriate to exempt from registration as exempt market deals (EMDs) persons selling only private placement securities under the capital raising exemptions.
- 1.2. The Northwestern Exemption allows unregistered individuals to sell high-risk exempt market products to the investing public, including vulnerable groups such as seniors. Significant investor abuses have been observed where there has been purported reliance upon the Northwestern Exemption.

- 1.3. FAIR Canada, as part of its submission on the exempt market and the accredited investor exemption<sup>2</sup>, has raised the issue that the Northwestern Exemption poses a real threat to investor protection and has led to investor losses (as noted in the press<sup>3</sup> and during legislative hearings<sup>4</sup>). FAIR Canada listed the revocation of the Northwestern Exemption orders as one of its 2013 “wish list” items.
- 1.4. The Northwestern Exemption orders allow a person to be exempt from the dealer registration requirement when trading in securities in connection with a distribution made in reliance on one or more of the following prospectus exemptions contained in National Instrument 45-106 *Prospectus and Registration Exemptions*:
- Accredited investors (section 2.3);
  - Family, friends, and business associates (section 2.5)
  - Offering memorandum (section 2.9), and
  - Minimum investment amount (section 2.10).
- 1.5. The Northwestern Exemption orders do not allow the person relying on the Northwestern Exemption to:
- provide advice, recommend or otherwise represent to the purchaser that the security being traded is suitable for the purchaser; or
  - have access or hold the purchaser’s assets.
- 1.6. Additionally, in order to rely on the Northwestern Exemption:
- the person or company must not be registered or be required to be registered under securities legislation in Canada or a foreign jurisdiction;
  - the person or company cannot have provided financial services to the purchaser other than in connection with a prospectus exempt distribution; and
  - the purchaser must sign a risk acknowledgement.
- 1.7. The order issued by the BCSC also stipulates that former registrants may not rely on the Northwestern Exemption.

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<sup>2</sup> See FAIR Canada’s comment letter to the CSA dated February 29, 2012 at <http://faircanada.ca/wp-content/uploads/2011/01/120229-FAIR-Canada-submission-re-MA-AI-exemptions.pdf>.

<sup>3</sup> David Baines, Vancouver Sun, “The readers speak: The B.C. Securities Commission must clean up the exempt securities market” (online: <<http://www2.canada.com/vancouver/columnists/story.html?id=4f3061d2-76a0-4b6b-aa6c-212d97c4336e>>); David Baines, Investment Executive, “B.C. exempt offering leaves investors sour” (online: <<http://www.investmentexecutive.com/-/news-37493>>) and David Baines, Vancouver Sun, “B.C. Securities Commission says it will review rules for sale of exempt securities” (online: <<http://www2.canada.com/vancouver/columnists/story.html?id=f8e3dc6b-8e4e-4d18-8275-efad3c24bb32>>).

<sup>4</sup> British Columbia, Legislative Assembly, Hansard, Vol. 28, No. 6 (22 November 2011) at 8967 (Hon. K. Falcon), online: <<http://www.leg.bc.ca/hansard/39th4th/h11122a.htm#8967>>.

1.8. **We commend the BCSC for dedicating the resources to monitor the use of exemptions and the quality of disclosure in the private placement market, and in particular, in conducting sample compliance reviews of Northwestern Exemption filers (referenced in the Notice) and surveying investors to confirm the proper use of the exemptions.**<sup>5</sup>

1.9. The BCSC's evidence, presented in its analysis, was that:

- Revoking the exemptions would have a negligible impact on capital raising;
- Significant non-compliance with the exemptions has been found through sample compliance reviews (74% failing to provide purchasers of private placement securities with the risk disclosure required and 90% failing to do so with respect to MIE filers), posing risk to investors; and
- Investors are most vulnerable to high-risk investments sold in the private placement market.

**This analysis demonstrates clearly that the Northwestern Exemption orders must be revoked in order to fulfill Canadian securities regulators' investor protection mandates, including the BCSC's regulatory mission to protect and promote the public interest.**

1.10. As noted in the Notice, "[i]nvestors who are considering investing in private placement securities would be better protected if they purchase securities from a registered dealer. In particular, they would have the benefit of advice about whether a purchase is suitable for them before they invest." FAIR Canada agrees that this is one benefit to investors. Additionally, FAIR Canada believes that the sale of private placements through registrants will allow for increased and improved oversight by the BCSC, which also will help better protect investors.

1.11. **The Northwestern Exemption orders do not impose any requirements or criteria as to the character of the individual or company that is exempted from the registration requirements. There are no background checks and the only information the participating regulators require is prescribed in a form (Appendix B to the orders), which includes basic contact information.**

1.12. **Exempt market salespeople are not required to be fit and proper. People who have been sanctioned by regulatory organizations or even convicted of criminal offences are able to sell in the exempt market in reliance on the Northwestern Exemption.**<sup>6</sup>

#### Alberta, Manitoba, Saskatchewan, NWT, Nunavut, and Yukon Investors Still at Risk

1.13. **FAIR Canada urges the other Northwestern Exemption jurisdictions (namely Alberta, Manitoba, Saskatchewan, Northwest Territories, Nunavut, and Yukon) to also repeal the Exemptions without delay.** Given the findings of the BCSC as a result of its compliance review, it

<sup>5</sup> BC Securities Commission Service Plan, 2012 – 2015, online:

<[http://www.bcsc.bc.ca/uploadedFiles/news/publications/2012-2015\\_BCSC\\_service\\_plan.pdf](http://www.bcsc.bc.ca/uploadedFiles/news/publications/2012-2015_BCSC_service_plan.pdf)> at page 14.

<sup>6</sup> In April 2012 the BCSC amended BC Instrument 32-513 to preclude former registrants from relying on the Northwestern Exemption in British Columbia. Therefore, individuals who were sanctioned or convicted of criminal offences and were previously registered would not be permitted to rely on the Northwestern Exemption in British Columbia.

would be harmful to investors for the other provincial securities regulators to simply “monitor the situation” rather than act now.<sup>7</sup> It is our expectation that similar non-compliance is occurring in the other jurisdictions which have issued Northwestern Exemption orders, to the detriment of investors. At the very least these regulators should undertake a similar compliance review to see if the results found by the BCSC are replicated in their jurisdiction.

We thank you for the opportunity to provide our comments and views in this submission. We welcome its public posting and would be pleased to discuss this letter with you at your convenience. Feel free to contact Ermanno Pascutto at 416-214-3443 (ermanno.pascutto@faircanada.ca).

Sincerely,



Canadian Foundation for Advancement of Investor Rights

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<sup>7</sup> It was reported that the Alberta Securities Commission is not reviewing the Northwest Exemption at this time and that it intends to “observe the results of the BCSC proposal.” See James Langton, “B.C. likely to end “Northwest” Exemption”, available online at <<http://www.investmentexecutive.com/-/b-c-likely-to-end-northwest-exemption?redirect=%2Fsearch>>.