

November 6, 2015

BY EMAIL

Secretary
Financial and Consumer Services Commission
85 Charlotte Street, Suite 300
Saint John, N.B. E2L 2J2
E-mail: secretary@fcnb.ca

Dear Sirs/Mesdames:

**Re: Proposed Financial and Consumer Services Commission Local Rule 45-509
Community Economic Development Corporations and Associations (“Local
Rule 45-509”)**

The Canadian Advocacy Council¹ for Canadian CFA Institute² Societies (the CAC) appreciates the opportunity to comment on proposed Local Rule 45-509.

As a general comment, the CAC is supportive of the efforts of the Financial and Consumer Services Commission to facilitate investment into the local economy by retail investors who want to invest in small businesses. However, it is important that the interests of local businesses in accessing capital more quickly and easily do not diminish the importance of investor protection in the capital markets. We have a number of concerns with respect to an exemption available solely to community economic development corporations (“CEDCs”) from the dealer registration, prospectus and investment fund manager registration requirements, as outlined below.

With respect to the exemption from the prospectus requirement, we understand that one of the conditions is that the securities cannot be sold through a registrant. Distributions can only be made by the individuals specified in the offering document (who themselves would rely on the exemption from the dealer registration requirements). The CEDC would be prohibited from providing advice to a purchaser, or otherwise recommending that the securities are suitable. We are concerned that if no dealer is involved the trade, the

¹The CAC represents more than 15,000 Canadian members of the CFA Institute and its 12 Member Societies across Canada. The CAC membership includes portfolio managers, analysts and other investment professionals in Canada who review regulatory, legislative, and standard setting developments affecting investors, investment professionals, and the capital markets in Canada. See the CAC's website at <http://www.cfainstitute.org/cac>. Our Code of Ethics and Standards of Professional Conduct can be found at <http://www.cfainstitute.org/ethics/codes/ethics/Pages/index.aspx>.

² CFA Institute is the global association of investment professionals that sets the standard for professional excellence and credentials. The organization is a champion for ethical behavior in investment markets and a respected source of knowledge in the global financial community. The end goal: to create an environment where investors' interests come first, markets function at their best, and economies grow. CFA Institute has more than 135,000 members in 151 countries and territories, including 128,000 CFA charterholders, and 145 member societies. For more information, visit www.cfainstitute.org.

investment in the CEDC, even if it represented only a small amount, could be unsuitable for the investor and no person is responsible for diligence on the product or investor.

There is no investor limit for issuers raising money under proposed Form 45-509F1, although we recognize that in practice the amount of money an investor is likely to invest will be commensurate with the maximum available tax credit. Nevertheless, given the proposed absence of a dealer providing suitability advice on the investment, we would recommend an annual investor limit (e.g. \$10,000) per investment in a CEDC.

It appears that the proposed Form 45-509F1 for offerings greater than \$250,000 will contain adequate information about the offering and management. We support, for example, the requirement to include any prior experience of management in a business similar to that of the CEDC, and would recommend that any prior experience with any CEDC (even if the business is dissimilar) should also be required. To the extent the promoters of the CEDC promote other CEDCs, it would be helpful for potential investors to know statistics with respect to the success of those other corporations. If the managers of the corporations do not have any solvency or proficiency requirements, then the solvency/financial position of the CEDCs run by those managers in the past take on even more importance.

While disclosure is required to be provided with respect to the number of shares beneficially owned by officers and directors and principal shareholders, the amount of investment made by promoters as well would be useful information given the unique small nature of CEDCs.

The requirement to register as an investment fund manager in National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* is equally applicable to managers of investment funds of all sizes across the country. In the July 17, 2009 notice confirming the implementation of the registration requirement, the CSA noted that the investment fund manager category is intended to ensure that investment fund managers have sufficient proficiency, integrity and solvency to adequately carry out their functions. We recognize that due to the unique nature of CEDCs, they may have difficulties meeting the requirements met by investment fund managers. However, we are of the view that additional conditions to any exemption from the IFM requirements for these unique corporations should be put in place in order to maintain appropriate investor protection for what may be a large, potentially unsophisticated group of investors with limited investment experience. Where an IFM exemption is available, although there will be disclosure in the offering document, there is no assurance that management of the CEDC has any investment fund or prior business or financial experience.

In the event the final local rule contains the proposed exemption from the IFM registration requirement, we support the required inclusion of the risk warning in the offering document with respect to the lack of IFM registration. It is helpful that the proposed language contains specific details such as the lack of minimum insurance and working capital requirements.

It would be helpful to investors in these vehicles if they could easily access information from the Financial and Consumer Services Commission's website on the CEDC program, similar to the information made available by the Nova Scotia Securities Commission on the community economic development investment fund program that is available in the Province of Nova Scotia [<http://nssc.novascotia.ca/corporate-finance/community-economic-development-Investment-funds>].

The CAC believes that given the nature of these corporations and the proposed exemption from the prospectus and dealer and IFM registration requirements, enhanced regulatory supervision of these entities should be required to help ensure investor protection. Timely and effective enforcement will be important to mitigate the potential risks.

Concluding Remarks

We thank you for the opportunity to provide these comments. We would be happy to address any questions you may have or to meet with you to discuss these and related issues in greater detail. We appreciate the time you are taking to consider our points of view. Please feel free to contact us at chair@cfaadvocacy.ca on this or any other issue in future.

(Signed) *Robin Pond*

Robin Pond, CFA
Chair, Canadian Advocacy Council