# APPENDIX D

## Alternative approach to regulating exempt market intermediaries in certain jurisdictions

The Alberta Securities Commission, British Columbia Securities Commission, Manitoba Securities Commission, Government of the Northwest Territories (Department of Justice), Government of Nunavut (Department of Justice), and Government of the Yukon Territory (Community Services) will each issue an order exempting a person from the dealer registration requirement when the person trades in securities relying on one of the following prospectus exemptions in National Instrument 45-106: (i) accredited investor (section 2.3); (ii) family, friends, and business associates (section 2.5); offering memorandum (section 2.9); and (iv) minimum investment amount (section 2.10). To rely on this order, a person must meet each of the following conditions:

- not be otherwise registered
- not provide suitability advice leading to the trade
- not otherwise provide financial services to the purchaser
- not hold or have access to the purchaser's assets
- provide a risk disclosure in prescribed form to the purchaser, and
- file an information report with the securities regulatory authority

These conditions preserve and enhance the current framework in the participating CSA jurisdictions for using the dealer registration exemptions for capital raising found in NI 45-106 today. In addition, they were part of the BCSC and MSC 2008 proposal for regulating exempt market dealers, with two exceptions. We describe both the differences between today's regime and this regime, and the 2008 proposals by the BCSC and the MSC, below.

Today, no person trading in these prospectus-exempt securities in these jurisdictions is required to register. The order will limit those who can rely on it to those who are not otherwise registered so that investors will get the same level of protection from a person who is registered in every trade. This was part of the 2008 BCSC and MSC proposal.

Today, it is implicit in the registration exemptions for capital raising that the person relying on the exemption will not provide suitability advice as that is a registrable activity. Although this condition was not articulated in the 2008 BCSC and MSC proposal, we do not think it is a change but, rather, makes explicit that which was implicit.

Today, there is no prohibition when relying on the registration exemptions for capital raising when the person has previously provided financial services. Nor was this condition part of the 2008 BCSC and MSC proposals. The participating jurisdictions think that this condition will avoid the risk that a purchaser who has previously had

financial services advice from the exempt market intermediary will not understand that he or she cannot rely on that same person for advice on this occasion. In British Columbia, the order will not include this condition but the BCSC will consult in the coming year to understand whether it should also impose this condition.

Today, there is no prohibition on holding or having access to the purchaser's assets. From consultations with exempt market dealers in certain jurisdictions, including British Columbia, Alberta, and Manitoba, we believe that this activity is not an activity that exempt market dealers generally engage in. So, although this condition is both a change from today's regime and a change from the 2008 BCSC and MSC proposals, we do not think that this new condition imposes a new burden on this community of exempt market intermediaries.

Today, there is no requirement that a separate risk disclosure, describing the risks of dealing with the market intermediary rather than the risks of the prospectus-exempt securities, go the purchaser. The 2008 BCSC and MSC proposal, however, included this condition. The participating jurisdictions think this clear disclosure about the risks of purchasing through the exempt market intermediary will increase the purchaser's chance of understanding that the purchaser is not represented and cannot get advice about the purchase from the intermediary.

Today there is no requirement imposed on exempt market dealers to file an information report to disclose their dealing in the prospectus-exempt market and provide the securities regulatory authorities with contact information. However, the 2008 BCSC and MSC proposal did include this condition. Participating jurisdictions believe that collecting this information will facilitate their communication with market participants in the prospectus-exempt market and allow them to better understand their businesses.

This order will be issued into force and effect contemporaneously with the implementation of NI 31-103.