

January 22, 2013

VIA EMAIL ONLY

Alberta Securities Commission
Autorité des marchés financiers
British Columbia Securities Commission
Manitoba Securities Commission
New Brunswick Securities Commission
Nova Scotia Securities Commission
Ontario Securities Commission
Registrar of Securities, Northwest Territories
Registrar of Securities, Yukon Territory
Superintendent of Securities, Nunavut
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island
Saskatchewan Financial Services Commission
Securities Commission of Newfoundland and Labrador

c/o
John Stevenson, Secretary
Ontario Securities Commission
comments@osc.gov.on.ca

and
Me Anne-Marie Beaudoin, Corporate Secretary
Secrétaire de l'Autorité
Autorité des marchés financiers
consultation-en-cours@lautorite.qc.ca

Re: Comments on Proposed Amendments to National Instrument 23-103 – Electronic Trading

Dear Sirs and Mesdames,

This letter sets out comments of the British Columbia Investment Management Corporation ("**bcIMC**") on the proposed amendments to National Instrument 23-103 – Electronic Trading (the "**Proposed DEA Rule**") in response to the October 25, 2012 Request for Comment by the Canadian Securities Administrators ("**CSA**").

bcIMC is a statutory corporation, incorporated under the *Public Sector Pension Plans Act*, S.B.C. 1999, c.44 , that manages the assets of various public sector pension funds, the Province of British Columbia, provincial government bodies and publicly-administered trust funds. The estimated market value of the assets managed by bcIMC as of March 31, 2012 was \$92.1 billion.

bcIMC operates pursuant to Exemption Order 2010 BCSECCOM 426 issued by the British Columbia Securities Commission on July 22, 2010 (the "**Exemption Order**"). Pursuant to the Exemption Order, bcIMC is exempt from the requirement under section 34(b) of the *Securities Act*, R.S.B.C. 1996, c.418 (the "**BC Securities Act**") to be registered as an "advisor" and is therefore also exempt from the requirement to be registered as a "Portfolio Manager" under section 7.2 of National Instrument 31-103.

Following are our concerns with regards to sections 4.2 and 4.7 of the Proposed DEA Rule which, as currently drafted, would prevent bcIMC from using direct electronic access ("**DEA**") systems.

Comment Regarding Section 4.2 – Provision of Direct Electronic Access

Section 4.2(2) restricts DEA access to registrants unless the registrant is a portfolio manager or a restricted portfolio manager. Despite the plain reading of this section which only restricts DEA provided to a "registrant", the Comment Summary and CSA Responses provided as Annex E to the Proposed DEA Rule suggest the restriction is broader and is also applicable to entities operating under an exemption. Following is the applicable comment and response:

Summary of Comment: Another commenter noted that use of the term "registrant" may be problematic in that the term is defined to include a "person or company registered or required to be registered" and creates ambiguity as to whether a person or company that is relying upon a registration exemption is intended to be caught when the term "registrant" is used.

CSA Response to Comment: We are of the view that a person or company that is required to be registered would be caught by the use of the term "registrant" and would not be able to use DEA unless it is registered as a portfolio manager or restricted portfolio manager. If such an entity wishes to use DEA, it may apply for an exemption from this proposed requirement.

We seek clarification of the CSA response as an entity operating under an exemption from the advisor (and therefore portfolio manager) registration requirements (an "**Exempt PM**") is not "required to be registered" by the very nature of the exemption and therefore does not meet the definition of "registrant" under the BC Securities Act. An Exempt PM is also not a "portfolio manager" under National Instrument 31-103 which only captures registered portfolio managers. It is inconsistent to deem unregistered Exempt PMs

"registrants" for the purpose of the restriction in section 4.2(2) and not allow those same entities the benefit of the permission granted in section 4.2(2)(a) to registered portfolio managers.

We request that the CSA revise its comment so there is no ambiguity on the interpretation of the plain reading of section 4.2(2) and that the restriction is applicable only to entities who meet the definition of "registrant". Alternatively, Exempt PMs who operate pursuant to an exemption from the applicable requirements in National Instrument 31-103 should be permitted to rely on those same exemptions for the applicable section of the Proposed DEA Rule.

We also seek clarification regarding who would be the appropriate entity to seek such an exemption order. The restriction in section 4.2(2) is on the provision of DEA by the participant dealer to its clients. It would therefore follow that in the event an exemption order is required, each participant dealer providing DEA access to an Exempt PM would need to seek an exemption order to provide access to that particular client. This does not correspond to the CSA Response to Comment above which suggests it is the Exempt PM who would need to seek the exemption order. Logistically, it makes more sense for the Exempt PM to obtain the exemption order rather than each DEA provider, and if it is the DEA provider who must seek an exemption order for each Exempt PM, they may be unwilling to offer DEA services for competitive pricing to Exempt PMs.

Comment Regarding Section 4.7 – Trading by DEA Clients

Section 4.7(1) of the Proposed DEA Rule provides that "A participant dealer must not provide direct electronic access to a DEA client that is trading for the account of another person or company. "Person" is defined very broad in section 1(1) of the BC Securities Act and includes, among others, "corporations", "partnerships", "trusts" and "funds".

Section 4.7(2) indicates that "despite subsection (1), when using direct electronic access, the following DEA clients may trade for the accounts of their clients: (a) a portfolio manager ...". It would appear that the intent of the use of the term "client" in section 4.7(2) for whose accounts may be traded for, must be a subset of the "persons or companies" prohibited in section 4.7(1).

Section 4.7(2) allows a DEA client to use DEA for the account of its "clients", however the restriction in section 4.7(1) is on the DEA provider. Therefore the permission in section 4.7(2) is technically unusable as

the prohibition in section 4.7(1) is applicable to the DEA provider and the permission is granted to the DEA user who, under the current drafting of the rule, cannot be given DEA access in the first instance.

The use of the term "person or company" in the prohibition in section 4.7(1) and the use of the term "client" in section 4.7(2) also severely restricts the use of the permission granted in section 4.7(2). For example, if a DEA user invests through any structure that meets the broad definition of "person", including through affiliate companies or collective investment vehicles, they will therefore not be permitted to have DEA access for those entities under the Proposed DEA Rule. We submit that the prohibition in section 4.7(1) should correspond to the permissions in section 4.7(2) and should be a restriction on use for the account of another "client" rather than a broad restriction on the use for the account of another "person or company".

Furthermore, the exemption from section 4.7(1) found in section 4.7(2)(a) is again only applicable to "portfolio managers" registered pursuant to National Instrument 31-103. We submit that this should also be available to Exempt PMs. If an entity meets the definition of "portfolio manager" but has an appropriate exemption, it should be exempt from the applicable DEA restrictions based on the same rationale. If the response is again that an exemption order should be sought by such entities, please clarify who would obtain that exemption order since the restriction in section 4.7(1) is on the DEA provider.

We thank you for the opportunity to make these comments and look forward to your response.

Yours Truly,

BRITISH COLUMBIA INVESTMENT MANAGEMENT CORPORATION



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