

Fogler, Rubinfeld LLP
Suite 4100, P.O. Box 95, Royal Trust Tower
Toronto-Dominion Centre
Toronto, Ontario, Canada M5K 1G8
Telephone: 416 941-9700 Fax: 416 941-8852
www.foglerubinfeld.com

FOGLER, RUBINOFF
BARRISTERS & SOLICITORS

Reply To: Gary M. Litwack
Direct Dial: 416-941-8815
E-mail: gml@foglerubinfeld.com

September 15, 2000

File No. 00/1002

**TRANSMITTED VIA E-MAIL
& DELIVERED VIA COURIER**

British Columbia Securities Commission
Alberta Securities Commission
Saskatchewan Securities Commission
The Manitoba Securities Commission
Ontario Securities Commission
Office of The Administrator, New Brunswick
Registrar of Securities, Prince Edward Island
Nova Scotia Securities Commission
Securities Commission of Newfoundland
Securities Registrar, Government of the Northwest Territories
Registrar of Securities, Government of the Yukon Territory
Registrar of Securities, Government of Nunavut

Claude St. Pierre, Secrétaire
Commission des valeurs mobilières du Québec
Québec, Ontario
800 Victoria Square
Stock Exchange Tower
P.O. Box 246
22nd Floor
Montréal, Québec
H4Z 1G3

c/o John Stevenson, Secretary

Ontario Securities Commission
20 Queen Street West
Suite 800, Box 55
Toronto, Ontario
M5H 3S8

Dear Sirs/Mesdames

Re: Proposed National Registration Database Forms

In response to Canadian Securities Administrators Staff Notice 31-401, we are submitting the following comments in respect of the draft registration forms for advisors, dealers and individuals in our own capacity and in our capacity as counsel to Friedberg Mercantile Group ("FMG").

We have ordered our comments (and those of FMG) by setting out the specific comments and then setting out the general comments.

1. Comments on Advisor Form

- 1.1 For the registration of a corporate advisor, the form does not request information as to the names of individuals acting as advisors and their registration categories. Categories for both corporate and individual registrants should include both registrations under securities legislation and registration under commodities legislation.
- 1.2 Registrations with the NASD and the NFA should also be contemplated in Item 7.
- 1.3 The word "clerical" in Item 15 should be replaced with a more specific word or phrase (ie. is it intended to exclude all non-advising personnel?).
- 1.4 We have assumed for the purposes of Item 17 that a mutual fund or other collective investment scheme carried out through a single legal entity would be considered one client. If this is not the intention, the form should make this clear.
- 1.5 The lead into Item 18 should provide "indicate the types of clients...". In addition, the example of hedge funds as an "other pooled investment vehicle" did not appear to us to be factually appropriate. Ordinarily, hedge funds would be structured so as to fall within the "investment companies" item.
- 1.6 The words "as required under securities laws" in Item 24 are inappropriate given that registrations are often granted by various provinces for a company which carries on business only from a single head office, such that all of their books and records are in a single location. Accordingly, it is a question of fact rather than securities legislation as to whether books and records are maintained other than at the head office location.
- 1.7 The word "party" in Item 29 should be "partner".
- 1.8 The wording of Item 34 is extremely broad, such that a simple yes or no answer would be of questionable utility. We would suggest that a preferable approach would be similar to that taken for the purposes of National Instrument 81-101 with respect to the allocation of brokerage business (ie. requesting the advisor to describe the basis for allocating brokerage business if other than based solely on price and execution).
- 1.9 It is suggested that it would be easier if a separate Schedule "B" could be completed for each direct and indirect corporate owner.
- 1.10 There is inconsistency between this form and the individual's form, in that the individual's form makes it clear that crimes for which a non-revoked pardon have been granted need not be disclosed. Should this not be the case for the purposes of "associates" of the applicant under Item 43?

- 1.11 In completing Schedule "E" in response to Items 45 and 46, such schedules import the presumption that any previous registration no longer held by the applicant has been terminated by regulatory sanction. Accordingly, we would suggest that the schedule be revised so as to first require the applicant to list all prior registrations held followed by the dates on which such registrations cease to be held, and further followed by an indication of whether the registration was voluntarily surrendered for reasons unrelated to regulatory sanctions (in which case the balance of the schedule need not be completed) or otherwise (in which case the remainder of the schedule must be completed).
- 1.12 In Item 8 under the "currently registered" heading, there is no contemplation of the possibility that the applicant could hold a current registration as an advisor and be applying for registration in an additional or other category.

2. Dealer Form

- 2.1 It is suggested that for the purposes of completing Schedule "D", Part 3 in responding to Item 17 (b) and (c) of the form, either Regulated Entities should be excluded or, in the alternative, particulars of multiple carrying brokers should be provided for. The same comment would apply with respect to completing Schedule "B" for the purposes of responding to Item 19.
- 2.2 With respect to Items 20 and 22, we would reiterate our comment in Item 1.10 above relating to clarification that pardoned offences of individuals need not be disclosed.
- 2.3 In Item 30, futures commission merchants and dealers making inter-dealer markets in over-the-counter forward contracts should be contemplated. In addition, the fifth item should be "dealer selling mutual fund securities" and the words "or limited partnerships" in the 10th and 11th items seem inappropriate. Finally, the category of dealers selling securities of only one issuer or associate issuers appears curious.
- 2.4 For the purposes of Schedule "A" and, in particular, Item 2 of such schedule, shouldn't a 5% indirect ownership threshold be applicable?
- 2.5 For the purposes of Schedule "B", the words "and officers" in the lead-in did not appear to apply. In addition, we would suggest that the indirect greater than 5% ownership threshold should apply for the purposes of Item 1.

3. Individuals Form

- 3.1 The information requested in Item 10 is broader than that required in completing the current form. Given, in particular, that the form will be available to the public, requesting particulars of the spouse's employer and his or her position held, absent the type of employment (for example, employed by another registrant) giving rise to regulatory concerns, appears

inappropriate. Accordingly, it is suggested that the form be limit self to requesting the information required under the current form.

- 3.2 The list of specific self regulatory organizations in Item 17 should include the NFA.
- 3.3 The types of registrations listed in Item 18 should include separately securities salespersons and commodities salespersons.

4. **General Comments**

- 4.1 Both we and FMG believe that the forms could be considerably more user friendly by using fields which can be easily accessed and other such features commonly available on commercial website questionnaires and applications. FMG further advises that they are currently using a computer based "Forms Application" program developed by CIPF to complete current individual registration related forms, the information for which is stored in memory. FMG suggests that it would be extremely beneficial if the forms could be based on a program which would use the existing data base.
- 4.2 It would be useful if, uniformly throughout the forms, the phrase "the applicant" would be used. Currently, there is sporadic use of references to "you" and other personal and third person words. This gives rise to confusion when, for example, the word "you" is used in requesting information for a corporate applicant.
- 4.3 The information provided to date is silent on who will administer the national registration data base system. FMG suggests that the system be administered by the IDA (which is consistent with practices in the United States, where the CRD system is administered by the NASD on behalf of the SEC and the various state securities regulatory authorities). FMG suggested that the IDA could maintain the CRD system even for registrants who are not current IDA members, such as advisors.
- 4.4 We note that the forms contemplate that oaths could be sworn by commissioners. It has been our experience that various provinces require notaries to sign. Have the CSA members all agreed to accept out of province commissioners?
- 4.5 The definitions of capitalized terms currently contemplated in the proposed forms has not been provided. Given that these definitions may substantially change the scope and meaning of various items and therefore give rise to substantive comments, we would suggest that it would be extremely helpful to provide such definitions as soon as possible, even if generated, circulated and used as a "master definitions" schedule for all forms (which we suggest may be useful in any event).
- 4.6 Finally, as is always the case when undertaking a significant restructuring of complicated forms, the language used for the purposes of many of the questions, and the cross-

references of various items throughout the form, are either incorrect or could be better phrased. We have not set out our specific language comments on the basis that we hoped to limit our comments to those which FMG asked us to put forward and substantive comments. We would, of course, be pleased to provide suggested language and particulars of incorrect cross-references to staff if doing so would be of utility at this time.

Both we and FMG hope that the foregoing comments will be of assistance to the Canadian Securities Administrators and would be pleased to respond to any questions which you may have, whether arising as a result of the comments above or otherwise.

Yours truly

FOGLER, RUBINOFF LLP

Gary M. Litwack

GML/nrb

encl.

cc. Enrique Z. Fenig
Friedberg Mercantile Group