

September 19, 2000

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
Registrar of Securities, Northwest Territories
Registrar of Securities, Yukon
Registrar of Securities, Nunavut

c/o Mr. John Stevenson, Secretary
Ontario Securities Commission
20 Queen Street West
Suite 800, Box 55
Toronto, Ontario
M5H 3S8

- and -

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

Dear Sirs:

**Re: Canadian Securities Administrators' ("CSA") Staff Notice 31-401
Registration Forms Relating to the National Registration Database**

Further to the above-mentioned CSA Notice 31-401, we offer the following comments on the three registration forms that the CSA proposes to use in connection with the National Registration Database ("NRD"). We understand that the CSA intends to replace the existing Form 3, Form 4 and Form 1-U-2000 with these three forms.

General Comments

While we appreciate the CSA's effort to improve the quality of the information gathered with respect to potential and existing registrants, overall we are disappointed with the length of the forms, the poor quality of their construction (duplication of information, spelling and grammatical errors) and the new information that is being requested. We believe that the CSA should strive for consistency in the administration of the NRD and its registration process as a whole to achieve a maximum level of efficiency and effectiveness. Yet, the proposed design of the forms and the detailed schedules that now form part of these new forms do just the opposite, in our view. Since much of the information requested in the schedules is of the exception rather than the rule (such as details of criminal activities, civil judicial and regulatory reporting), we believe that the present system of providing this information as a custom exhibit to a standard form is far more efficient and effective than this proposed format.

Also, we are concerned with the nature of the new information that the CSA is requesting in the forms related to the applicant's general business activities. While we do not object to providing this information in assisting the CSA (or a recognized SRO) in preparing for a compliance examination, we question the inclusion of this information in an application form that is sworn by affidavit. Since much of this extra information, such as hours of business and numbers of employees and clients, has no bearing on an applicant's overall suitability for registration, we would encourage the CSA to consider gathering this information outside of the application form process.

Specific Comments – Registration Form – Adviser

(Some of the specific comments also apply to the registration forms for both the Dealer and the Individual. In this case, we have identified these comments by affixing an "I" or "D" to the end of the comment.)

1. Instructions for Completion/Definition of Terms

We assume the instructions and definitions are yet to be drafted. We may have comments on them once we review the draft text. (D)

2. Use of Form

As the CSA intends to use this form for both initial registrations and amendments, how would the registrant complete the form in respect of an amendment? Would the registrant only complete the sections relevant to the amendment? Compared to the current system of a separate, shorter form with a description of the amendment attached, this system appears to be more cumbersome and difficult to comply with. (D) (I)

3. Inserting NRD Numbers

We assume that the form should indicate that the principal jurisdiction would issue the various NRD numbers upon granting the initial registration of the firm, the branch or the sub-branch office. Would the registrant then be responsible for inserting the NRD number where the form is used for an amendment? (D) (I)

4. Question 1 – Adviser Name

- a. We were not aware that CSA jurisdictions were considering applications from sole proprietors who wished to seek registration as an adviser firm. We understood that only corporations, partnerships, or other separate legal entities would be considered for registration as adviser firms. (D)
- b. Should item (b) read “Has or does the applicant...”? (D)

5. Question 2 – Head Office

Add the requirement to stipulate the area code for the fax number to item (e) and all other occurrences of the fax number throughout the form. (D) (I)

6. Question 3 – Authorized Firm Representative

Does this individual have to be a registrant? We suggest that the answer to this question be specified in this area of the form. (D)

7. Question 4 – Branch Manager

- a. Should item (a) include a requirement that the branch manager be registered and remind the applicant to submit an application for this individual. (D)
- b. We acknowledge the possible use of branch offices for adviser firms, although that has not been the pattern of adviser registrants in Canada. We are not familiar with advisers seeking registration of sub-branches however. Would this not be more appropriate for the dealer application form?
- c. We suggest adding a request for the e-mail address of the branch, along with the website address. (D)

8. Question 6 – SRO and Securities Commission

With reference to the Canadian Venture Exchange, Montreal Exchange, Toronto Stock Exchange, Toronto Futures Exchange and Winnipeg Commodity Exchange, would it not be more appropriate to ask the applicant whether it is a member of these exchanges, since none of these exchanges presently carry out any registration or member regulation functions? (D) (I)

9. Question 7 – Registrations and Memberships Outside of Canada

- a. Consider adding the NASD, NFA, CFTC and other major U.S. exchanges such as the NYSE, NASDAQ and AMEX to the list of potential SRO's that the applicant could belong to. (D, I re: major U.S. exchanges)
- b. Amend the opening sentence to read, "in which the applicant is a member of or registered with outside of Canada:" (D)

10. Question 8 – Registration Category

- a. Specify which of the registration categories listed are only available in certain provinces (for example, International Dealer, Financial Adviser). (D)
- b. Under "Registering", should 'Securities Advisers' and 'Financial Advisers' be specified in the singular?

11. Questions 9 & 10 – Auditors

- a. We are not certain why the information in Question 9 is necessary. It has not been requested previously and even if provided, we believe the auditors would not be in a position to provide any information to the regulatory authorities without consent from the client. (D)
- b. We are not certain why the information in Question 10 is necessary. The requirement to deliver audited financial statements as part of the registration application would indicate the appointment of the auditors. (D)

12. Question 12 – Legal Status of Applicant

See our comment regarding Adviser name. We were not aware that sole proprietors would be considered for registration as adviser firms. (D)

13. Question 13 – Place of Legal Status

Should the choices also include "Country"? (D)

14. Questions 15 – 23 - Information About Your Advisory Business

As indicated in our General Comments, we respectfully disagree with the decision to request the information in these questions as part of the registration application process. The registration process is intended to provide the securities regulatory authority with information about the applicant that will allow the regulatory authority to assess the applicant's suitability for registration. Subsection 26(1) of the *Securities Act* (Ontario) reads:

26. (1) Granting of Registration – Unless it appears to the Director that the applicant is not suitable for registration, renewal of registration or reinstatement of registration or that the proposed registration, renewal of registration, reinstatement of registration or amendment to registration is objectionable, the Director shall grant registration, renewal of registration, reinstatement of registration or amendment to registration to an applicant.

We question how information regarding the number of employees, number of clients, assets under administration, or other information requested in these questions relates to the applicant's suitability. While we appreciate the efforts of CSA jurisdictions to gather information for audit planning purposes, we suggest that including this information in an application that is sworn by affidavit is both unnecessary and unreasonable. What if the information provided in response to say, Question 15 regarding the number of employees turns out to be incorrect, through an unintentional error. As this information was provided under affidavit, the principal jurisdiction may choose to use this error as a basis of assessing the application as a whole and possibly even the continued suitability of the registration, when neither of these issues should be reasonably questioned as a result of this unintentional mistake.

Should the CSA decide to retain these questions in the application form, we suggest that the forms include specific definitions for various phrases used in the questions. Without such definitions, it would be difficult for an applicant to be fully confident that it is answering all questions correctly, especially given that the answers are subject to an affidavit attesting to their truthfulness. Such phrases include:

- 'Investment advisory functions' (Question 16(a));
- 'Solicit advisory clients' (Question 16(b));
- 'Provide advisory services' (Question 17);
- 'High Net Worth Individuals' (Question 18);
- 'Continuous and regular supervisory or management services' (Question 20); and
- 'Financial planning services' (Question 22).

For example, what activities does an employee perform when they 'solicit advisory clients'? If a portfolio manager meets an individual, collects his or her business card and passes the card to the marketing department of the portfolio manager's firm that in turn starts to send out the firm's quarterly performance newsletter, has the portfolio manager attempted to solicit an advisory client? If so, the difficulty of determining and tracking such activities to determine how many employees perform such activities would be impossible to do on a cost-effective basis, without specifically defining this phrase.

15. Question 24 – Books and Records

Consider amending the question to remove the redundant phrase "as required under securities laws".

16. Question 25 – Other Business Activities

Add the term “None” to the list of choices that the applicant can select in this question.

17. Questions 28 & 29 – Financial Industry Affiliations and Activities

- a. Consider amending the second definition of a related party to read: “all persons or entities that control, directly or indirectly, a majority of the voting shares or other interest in the applicant.”
- b. Add the phrase “Other (specify)” to the list of choices that the applicant can indicate as a related party in this question.
- c. In Question 29, should the term “general party” be “general partner” instead?
- d. Why is the information in questions 28 and 29 requested for adviser applicants but not for dealer applicants?

18. Questions 30 - 35 – Interest in Client Transactions

- a. The references to the terms “you” and “yourself” in these questions are inappropriate where the applicant is a corporation or some other non-individual entity. Consider amending the question to correct this inconsistency. (D)
- b. Why is the information in questions 30 thru 35 requested for adviser applicants but not for dealer applicants?

19. Questions 36 – 38 – Custody

- a. The same comments in respect of Questions 30 – 35 also applies to these questions.
- b. In Question 38, should the reference to Item 36(a) instead read Question 37(a)?

20. Question 39 – Shareholders

- a. Consider changing the last word of this item to read “applicant” rather than “firm”. (D)
- b. Should Questions 39 and 40 appear together with Questions 28 to 35 regarding related parties?

21. Question 40 – Control Persons

What is meant by the phrase “directly or indirectly control your management or policies”? Who would fall into this classification that was not already identified as a shareholder, officer or director of the adviser firm? (D)

22. Questions 41 – 43 – Criminal Disclosure

- a. Rather than repeating the phrase ‘If “yes” complete Schedule “C”’ after each question, consider grouping all these questions together and inserting the phrase once at the end of the questions. (D) (I)
- b. Question 43 is a subset of Question 42 as both questions ask the same thing – whether the applicant has ever been convicted of, pleaded guilty or “no contest” to offences under the law. Consider removing one of these two questions or combining them to eliminate the redundancy. (D)
- c. Question 43(b) includes a reference to 16(a). Is this to Question 16(a)? If so, we are not clear of the purpose of the reference. Should this reference instead be to Question 43(a)?

23. Questions 44 - 46 – Regulatory Disclosure

- a. Should Question 44(a) also include a reference to U.S. federal or state securities laws? (D)
- b. Should Question 44(b) include a complete reference to Canadian and U.S. securities laws, identical to the revised reference in Question 44(a)? (D)
- c. The same comment regarding the use of the phrase ‘If “yes” complete Schedule “E”’ that we made regarding Questions 41 – 43 also apply here. (D) (I)
- d. Question 45 (c) includes a reference to Item #9. This refers to the applicant’s auditors and we are not clear of the purpose of the reference. (D re Item #18)
- e. Why does Question 45(d) include a specific reference to securities legislation of British Columbia? Should the question not refer to legislation of all provinces and territories generally?
- f. Should the term ‘Securities Act’ or ‘Securities Acts’ in Question 45(e) be italicized? (D)
- g. Consider amending Question 46(a) to remove the reference to ‘Investment Bankers’ and instead indicate, “the Investment Dealers Association of Canada (IDA), Mutual Fund Dealers Association of Canada (MFDA) or similar self-

regulatory organization...” and apply the same language to Questions 46(b) and (c). (D)

24. Question 47 – Civil Judicial Disclosure

Instead of Question 50, should this section also include a question about whether a judgment or garnishment has ever been rendered against the applicant or is currently outstanding against the applicant for damages or relief in respect of fraud or for any other reason? (D re Questions 26 and 29)

25. Questions 48 – 50 – Financial Disclosure

The same comment regarding the use of the phrase ‘If “yes” complete Schedule “G”’ that we made regarding Questions 41 – 43 also apply here. (D) (I)

26. Affidavit

Consider updating the affidavit to indicate that it should be signed in front of a Commissioner of Oaths who is licensed in the Province in which the deponent is signing the application or before a Notary Public. (D) (I)

27. Schedule “A” – Direct Owners and Officers

- a. Amend item 1(a) to instead read “and any other individuals holding officer positions.” (D)
- b. Consider adding definitions for indirect and beneficial owners or include a reference to item 1 of Schedule “B” for the individuals and entities that would be considered indirect owners. (D)

28. Schedule “B” – Indirect Owners

Consider changing the title to “Indirect and Beneficial Owners”. (D)

29. Schedule “C” – Criminal Disclosure Reporting

- a. Add a note to the beginning of the schedule suggesting that respondents seek legal counsel in responding to the required questions. (D) (I)
- b. Questions 2(b) and (c) refer to ‘felony’ and ‘misdemeanor’ that are terms that relate primarily to U.S. law. Consider adding the terms ‘summarily’ or ‘by indictment’ as these are more applicable to Canadian criminal matters. (D) (I)
- c. Correct the spelling error in question 2(b) – ‘please’ should be ‘pleas’? (D) (I)

- d. Question 2(b) asks whether the event was a felony (or related term under Canadian law). Why is this requested again in question 2 (c)? (D) (I)
- e. Would respondents also provide updates to previously filed information relating to criminal matters on this schedule? If so, consider adding a mention of this as is done at the top of Schedule “D”. (D) (I)

30. Schedule “D” – Various Matters

- a. Consider adding a title to this schedule, such as “Various Disclosure Matters”. (D)
- b. Why does this schedule include a question regarding whether this is an initial or amended filing when the other schedules do not? (D)
- c. Would the information on affiliated advisers be more appropriately included on Schedule B?
- d. In Section VII, rather than or in addition to asking about the percentages of clients invested in a limited partnership or the cost per unit sold, would it not be appropriate to ask for details of how the relationship between the adviser firm and the related dealer that sold the units was disclosed to the clients?
- e. Correct the spelling error in Section VIII – ‘note’ should be ‘not’?
- f. See our comment regarding Question 40 relating to persons that ‘directly or indirectly control your management or policies’.
- g. Consider adding further instructions to Section IX indicating that a response is only required in this section when the applicant’s primary business is a business not otherwise listed in Question 25. (D)

31. Schedule “E” – Regulatory Disclosure Reporting

- a. Questions 45(a), (b) and 46(a) all request information on an applicant’s registration/SRO membership history. There may not be a ‘regulatory actions’ arising from this information. Accordingly, applicants should be instructed that questions 1 and 2 of Section II of the schedule do not apply to these responses. (D re Questions 24(a), (b), 25(a))
- b. What constitutes a ‘reprimand’ referred to in question 2 of Section II. Is this a specific document type issued by securities enforcement departments or would this include any discussions between an applicant and regulatory staff regarding an inquiry or investigation that resulted in no other formal action being taken? (D) (I)

- c. Should questions 2 and 7 of Section II be linked as the matters are related? Or should question 2 be identified as only applying to matters that are resolved?
(D) (I)

Specific Comments – Registration Form - Dealer

32. Question 17 – Business Structure

- a. Define “other acceptable location” referred to in this question.
- b. Would the term ‘financial institution’ not be more appropriate description than ‘bank’?

33. Amalgamation of Dealer and Adviser Forms

Given the considerable similarities between the Dealer and Adviser registration forms, we suggest that they be combined into one form with spaces to indicate information that is applicable to dealers or advisers only.

Specific Comments – Registration Form - Individual

34. Citizenship Information

We assume that if the applicant is a Canadian citizen that passport information will not be required. Please indicate this in this section.

35. Question 4 - Residential Information

We are not clear of the purpose of residential information going back ten years. How is this information used in determining an applicant’s suitability for registration?

36. Question 7 - Employment

- a. Should Question 7 read “from which I work or will be working”?
- b. Why is this information requested when similar information is requested in Question 15?

37. Question 10 - Spousal Information

We are not clear of the purpose of the information regarding the spouse’s employer or position held, unless the same registrant or another registrant employs the spouse.

38. Question 20 - Prior Registrations

If an applicant responds “yes” to this question as a result of a current registration, the applicant will be providing information already requested in Question 16. Consider revising the form to remove this duplication.

39. Questions 24 & 25 – Criminal Disclosure

The references to items #15 and #16 appear to be incorrect. Should the references be to items #23 and #24 respectively?

40. Schedule “B” – Reporting of Prior Registration or Licensing

The question numbers in Section II are incorrect.

Please contact me directly if you have any questions with these comments. I can be reached at 1-888-738-6719 or by fax at 1-780-423-0029.

Yours truly,

Darrell Bartlett, CA
Vice President, Regulatory Affairs