PACIFIC SPIRIT INVESTMENT MANAGEMENT INC.
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17 June 2007

British Columbia Securities Commission
Alberta Securities Commission
Saskatchewan Financial Services Commission
Manitoba Securities Commission
Ontario Securities Commission
Autorite des marches financiers
New Brunswick Securities Commission
Registrar of Securities, Prince Edward Island
Nova Scotia Securities Commission
Superintendent of Securities, Newfoundland and Labrador
Registrar of Securities, Northwest Territories
Registrar of Securities, Yukon Territory
Registrar of Securities, Nunavut

c/o John Stevenson
Secretary
Ontario Securities Commission
20 Queen Street West
19th Floor, Box 55
TORONTO ON M5H 3S8

Dear Friends:

Re: National Instrument 31-103

We applaud your efforts to harmonize, streamline, and modernize the registration regime across Canada.

We offer the following comments as feedback on your proposals:

Elimination of Investment Counsel Category

It is imperative that those who were previously registered only in the investment counsel category requalify as Portfolio Managers and not be grandfathered. The investing public has the right to know that all those who hold themselves out as Portfolio Managers are fully qualified.

Permitted Dealing Activities for Advisers

Advisers who elect to serve their clients through in-house pooled funds rather than segregated portfolios should not be restricted by arbitrary restrictions prohibiting them from using this vehicle or having to register as a dealer. Provided the adviser complies with all the rules and requirements involved in establishing a fully managed relationship, they should be allowed to invest the client's assets in an in-house pooled fund. It should be the relationship (i.e. adviser – client) that establishes the suitability of the investment and there should not be a presumption that because the advisor is investing in an in-house pool that this is somehow not an appropriate investment or not a fully managed relationship. The fact that a fully managed account is created or used to qualify for the exemption is, in our opinion, irrelevant if the Adviser establishes a fully managed relationship.

In-house pooled funds enable an adviser to provide their services to a greater number of clients and also allow the adviser to provide their services more cheaply. Both of these are desirable objectives and should be encouraged, rather than discouraged.

Proficiency

It should be made clear that existing Portfolio Managers will be grandfathered in respect of the proficiency requirements. It does not make sense that a Portfolio Manager, who has served his clients well over a long period of time, can be denied registration as an adviser because they completed their examinations more than 36 months before registering as an Adviser.

Financial Institution Bonds

I suggest that the regulators review the experience with respect to Financial Institution Bonds to determine whether they provide a needed protection to investors. Has any claim been paid under a Financial Institution Bond in respect of a Portfolio Manager?

Financial Institution Bonds are expensive and may not be available to a new Adviser. Imposing the requirement of a Financial Institution Bond may restrict or prevent new entrants to the business, thereby limiting competition.

Dispute Resolution Service

The best dispute resolution service is the judicial system. It is a system that has been developed over centuries, in which the parties have faith in the system, under which each party has rights and protections, and which is funded by the taxpayer.

As a smaller firm we would not be able to afford to participate in a dispute resolution service separate from the courts. It would also be extremely difficult, and in our opinion

wasteful, to have us research dispute resolution services when a world class and respected judicial system already exists in Canada.

Excess Working Capital

The requirement to calculate excess working capital within 20 days following the month end is not workable. Our year end financial statements are not finalized until approximately 89 days following the year end. In addition, in a smaller firm where key employees may be off on vacation during the 20 days following month end, the proposal would not be workable.

Conflicts

A registered firm should identify and deal with material conflicts. A material conflict would be a conflict, which if disclosed, would affect the decision of any of the parties. If a conflict is not material (i.e. if disclosure of the conflict would not affect the decision of any of the parties), then why set a system to deal with the matter?

Regulator Power to Intervene

A regulator should not be given the power to intervene. In our opinion, it is inappropriate for the regulator to be judge and jury.

Mobility Exemption

Advisers registered in one jurisdiction should be allowed the ability to deal with up to 5 clients in another jurisdiction without having to meet the strict qualifications proposed under the mobility exemption.

Fee Payment Date

A fee payment date of January 31 would be best for our firm as it coincides with our fiscal year end.

Restricted Portfolio Manager

We believe that it would create confusion amongst the investing public to have a category of restricted portfolio manager. If a portfolio manager wishes to restrict his business to specified securities or classes of securities they should be allowed to do so, but they should be held to the same standards as any other portfolio manager.

Exemption for IDA Members

IDA Members should not be exempt from registration. There must be a level playing field and all advisers should be held to the same standards and requirements.

The designations “Portfolio Manager” and “Adviser” whether used alone or in combination with any other words should be restricted to use by those registered as advisers. The investing public is entitled to clarity on this matter to ensure that they make appropriate decisions and that they are not misled or confused.

Chief Compliance Officer

Proposed NI 31-103 restricts those who can be registered as Chief Compliance Officer to those who have obtained professional designation as a lawyer or Chartered Accountant. This is too restrictive. It does not recognize that it is the Chief Compliance Officer’s attitude, experience, integrity, and diligence that will determine the veracity of the compliance system. Being a professional is not sufficient.

In the alternative, why are CGAs, CMAs, CFAs, and BComs specifically not listed?

It may be difficult, if not impossible, for a small firm to have a Compliance Officer with a professional designation. What if the portfolio manager is a sole practitioner and is neither a lawyer nor a Chartered Accountant?

The Partners, Directors and Senior Officers Exam is irrelevant to Portfolio Managers. This exam is oriented towards IDA members (brokerage firms). Why does a Chief Compliance Officer for a Portfolio Manager need to know about compliance issues, including the calculation of excess working capital, in a brokerage firm? The criteria need to be relevant.

The requirement for three years of experience is unworkable for a smaller firm.

The criteria for a Chief Compliance Officer will inflate the cost of doing business for a small Portfolio Manager and create severe barriers to entry into the profession.

Capital Requirement

The $100,000 excess capital requirement for an investment fund manager seems excessive compared to that for an adviser. It also is counter intuitive as I would expect that the capital requirement for a fund manager would be less than for an adviser given that they would most likely have fewer clients.

Insurance

From time to time we receive cheques from our clients payable to our firm in error. The cheques should be made payable to the custodian of their account, but instead are made payable to the Portfolio Manager. As a client service we process the payments through our trust account and forward the amount to the custodian. In our opinion, these client service gestures should not drive a Portfolio Manager into the higher level of Financial Institution Bond.

For an adviser who handles, holds, or has access to client cash the amount of bond coverage should be linked to the amount of the funds handled, held, or to which there is access, and not to assets under management. The risk is related to the funds that the Portfolio Manager can access and not to the overall assets under management.

If a Portfolio Manager is unable to obtain a Financial Institution Bond at a reasonable price, they should be exempt from the requirement. A small manager or a new manager may find it impossible or cost prohibitive to comply.

Suitability

A number of our clients have little or no investment knowledge. They retain our firm to make investment decisions on their behalf using our knowledge. To require a Portfolio Manager to make discretionary purchases or sales with reference to the client's investment knowledge completely defeats the purpose of the client hiring our firm. The client hires us to substitute our investment knowledge for their lack of investment knowledge.

Leverage Disclosure

The Portfolio Manager should only be required to document that they have provided the leverage disclosure statement to the client. Requiring the client to confirm in writing that they have read the statement is too unwieldy.

Also, once the leverage disclosure statement has been provided to the client there should be no further need to provide ongoing renewals of the statement.

Content of Relationship Disclosure Document

The amount of information that is required to be included in the Relationship Disclosure Document will overwhelm the client (and quite possibly the advisor). For example, when we are dealing with a client who has limited investment experience we will review investment risk in a session that will take up to one hour. We do this to educate the client, as an informed client is a better client. Trying to put this into a relationship disclosure document is like trying to summarize a university securities course in a few paragraphs. If you simplify you run the risk that it will not be relevant. If you attempt to do a fuller explanation the client will not read it or will be overwhelmed.

In the portfolio management relationships that our firm has, the client outlines the goals that they want to achieve and we map out the plan that has a high probability of achieving the goals. The client relies on us to match the investments to their goals, risk tolerance, time horizon, need for liquidity, tax status, and the other factors unique to them. The client in almost every case turns over the assessment of the risk of the investment to us because they do not understand the risk of investments, or they do not have the skill set to evaluate the risk.

It would be helpful if you could identify the "risks that should be considered by the client when deciding to use an adviser." Are brokerage firm sales people required to identify the risks of dealing with a brokerage sales person? Advisers perform a very important role in helping investors. If there are risks to using an advisor, which I do not accept, it would be, in our opinion, poor business practice to scare off the potential client who most needs our help. The recommendation does not reflect the nature of the relationship that exists between a portfolio manager and his client.

Updating Client Relationship Disclosure Document

It does not make sense that a client relationship disclosure document is required to be updated every time there is a change in the client's circumstances. For example, a client may email us with a change of address. We update our records and file the email in the client's permanent file. Why is there a need to prepare a new client relationship disclosure document? The client already knows what has changed.

The requirement should be that the advisor should maintain current records with respect to the Know Your Client Information and changes to matters covered by the client relationship document. Good business practice would dictate that if the change requires client confirmation that the portfolio manager will document that the client has provided that confirmation.

Client Relationship Disclosure Document

We are a small firm with only 5 people in the office. We have in excess of 250 clients. If we were able to prepare one client relationship disclosure document per business day (which would be a challenge on some days) it would take us approximately one year to prepare the forms. There needs to be a lengthy phase in period to accommodate the administrative work that will be necessary.

Securities Subject to Safekeeping Agreement

Why is it necessary for a discretionary portfolio manager to seek instruction from a client to release securities? I would expect that the discretion conferred by the client would authorize the manager to deal with these matters.

Record Retention

It is my understanding that legal action relating to a portfolio management relationship would be statute barred after six years. The record retention requirements should match the law.

Statements of Account and Portfolio

Our client's securities are held by various custodians, generally including brokerage firms and trust companies. These custodians report to the client monthly (or at least quarterly if

there has been no activity in the account). A registered adviser should not be required to send to the client a statement of the portfolio where this is already being done by the custodian of the assets.

Conflicts management obligations

The proposed registration requirements state that a registered firm must deal with a conflict of interest in a "fair, equitable, and transparent manner". What does transparent mean in this context? In our opinion the word "transparent" adds nothing to the requirement to deal in a fair and equitable manner.

Permitted Referral Arrangements

There should be an exemption from the referral fee requirements where the portfolio manager passes on the referral fee to the client. We are a fee for service business and we do not take commissions or referral fees for our own account. However, when a referral fee is offered, we will claim it, disclose it, and pass it on to our client.

Reasonable Diligence when Referring Clients

In our opinion this matter is best left to the client and the Portfolio Manager to deal with in their contractual relationship. Our present Investment Management Agreement specifically provides that the portfolio manager accepts no responsibility in respect of the advice provided by the third party.

The provision with respect to reasonable diligence with respect to referrals also makes no distinction between referrals where a referral arrangement is in place, and one where no fee is in place. The provision should not apply where there is no referral arrangement in place.

Failure to Pay Fees

The suspension for failure to pay annual fees should only take effect 30 days after the regulator has notified the firm of its failure to pay. It should not be 30 days from the due date.

Firms' Obligation to Share Information

This provision should be struck from the proposals.

The proposal exposes the registered firm which is obligated to provide information with the risk of damages for violating privacy legislation and introduces the risk of litigation for libel or slander. The registered firm may also be precluded by contractual obligations from disclosing all relevant matters.

Imagine a situation where a portfolio manager learns that an employee is behaving unethically, but no one will step forward to provide evidence that can be retained by the portfolio manager. The portfolio manager may elect to negotiate a termination of the employment of the unethical party in order to protect the reputation of the portfolio manager. What can the portfolio manager say to another registered firm who enquires at the time of hiring the unethical individual?

If you have any questions concerning the above, please call me at 604-687-0123.

Sincerely,

PACIFIC SPIRIT INVESTMENT MANAGEMENT INC.

John S Clark
President