

41 Valleybrook Drive, Suite 200
Toronto ON Canada M3B 2S6
T +1 416 815 8222
F +1 416 642 5276

June 19, 2007

John Stevenson
Secretary
Ontario Securities Commission
20 Queen Street West
19th Floor, Box 55
Toronto, Ontario
M5H 3S8

Via email: jstevenson@osc.gov.on.ca

Anne-Marie Beaudoin
Directrice du secretariat
Autorite des marches financiers
Tour de la Bourse
800, square Victoria
C.P. 246 22 etage
Montreal, Quebec
H4Z 1G3

Via email: consultation-en-cours@lautorite.qc.ca

To: 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

Re: Response to Request of Comments –Proposed National Instrument 31-103

Thank you for the opportunity to comment on proposed National Instrument 31-103 (“NI 31-103”).

The Canadian Securities Administrators are to be commended for their joint efforts in trying to streamline, harmonize and modernize the registration requirements across Canada. The purpose of this letter is to raise some concerns and comments concerning the impact of NI 31-103 on those persons who currently provide certain services to the markets, generally referred to as “Mergers, Divestitures, Acquisitions and Financing Services” (MDA & F Services”, see definition below) and currently would be registered as Limited Market Dealers in Ontario and/or Newfoundland and Labrador and unregulated in all other markets.

Before addressing the concerns we thought it best to define the services as narrowly as we could and have done that on Appendix A attached. There are several common factors which need to be considered when looking at the type of services that are performed by these firms. They are:

1. The firms do not take possession of or hold any client cash or securities but act solely as an intermediary. All cash is remitted directly to the issuer or selling security holder and all purchased securities are delivered directly by the issuer or selling security holder to the purchases.
2. The transaction is completed pursuant to a legal agreement made between the purchaser and with the issuer or the selling security holder, which agreement, together with related closing documents, contains all of the information otherwise required to be included in a trade confirmation.
3. The issuer is a “private issuer” as defined in NI 45-106 s2.4, and the security is acquired by an accredited investor, director, officer, employee, founder or control person such that the distribution is exempt from the prospectus requirements. In the case of a public issuer all current take-over legislation is followed and complete circulars are issued.
4. The counter-parties to the transaction are generally financial institutions, private equity limited partnerships or large private issuers or public issuers. All are of a size and type that would qualify them as accredited investors who perform extensive due diligence and fully negotiate the terms of the transactions as opposed to accept or reject an offered deal.
5. All current arrangements are covered by an engagement letter which summarizes the current facts, the suggested solutions and the fees associated with completing the assignment. Standard terms and conditions include the settlement, by arbitration, of any matters in dispute at the end of a client project.

Specifically our concerns are around the following areas of the proposed legislation:

Area of Concern and requirement under NI 31-103	Perceived Problem	Suggested Solution
Proficiency: Need to complete (1) CSC and either Conduct and Practices Exam or PDSO Exam, or (2) Series 7 Exam	PDSO focuses on capital adequacy and “know your client” rules which are not relevant in this type of activity given the high level of examination and negotiation before a transaction occurs and the fact that we do not take possession of assets or securities. Proficiency is determined by the client at the outset of the engagement.	The CSA needs some easily measured standard to assess proficiency and that could be a combination of: <ol style="list-style-type: none"> 1) Length of tenure 2) CA, LLB, MBA 3) Corporate Finance Specialist training (e.g. CICA Corporate Finance designation).
Regulatory Capital: <ol style="list-style-type: none"> 1) Working Capital of at least \$50,000 2) Financial Institutions Bond of at least \$200,000. 	Working capital requirements are acceptable however the FIB is of little use and very expensive and difficult to obtain.	Go with working capital requirement and have the Chief Compliance Officer certify compliance on a quarterly [or monthly] basis as part of the normal compliance checklist.
Financial Records: Annual Audit and quarterly internal statements.	Expensive to audit smaller firms and of little value since we hold no securities nor take possession of any client assets. Statements are used to provide information to the principals, support tax filings, and allow for income distributions for all which unaudited internal statements are entirely suitable.	See above. Monthly compliance to a minimum level of working capital.
Know your Client Rules: Not clear on requirement.	Uncertain as to the standard of care required.	All firms should have a written policy on client acceptance which includes reviewing the various anti-terrorist lists as well as completing any reference checks necessary.

		Engagement letters are to clearly illustrate the current facts, the stated objectives and the likely course of action together with all costs to implement.
Confirmation of trades	Unnecessary given agreements in place	Use of legal documents to confirm all trades.
Statement of account and portfolio	Does not hold cash or securities	NI 31-103 should confirm no statement of account or portfolio required where no securities held.
Participation in a dispute resolution service or reporting to the regulator.	Unnecessary expense as it is completely covered in existing engagement letters with clients.	Ensure that the policies of the EMD are in place to ensure all engagement letters contain a provision detailing dispute resolution alternatives which have been accepted by the client. Further ensure that all disputes are documented and dealt with in a timely fashion.

Alternatives:

The Notice and Request for Comment states in footnote 14 that “Transition provisions are being worked on as well as NRD mapping requirements in order to make the transition from the current categories to the new categories as efficient as possible.” If after this comment period the CSA decides to replace the limited market dealer category with the Exempt Market Dealer category we would suggest that an additional sub-set of the EMD be established to recognize those EMD’s who provide only MDA & F Services. This category would then apply to a very limited defined set of services and if the provider fell within those criteria the governing rules would be such to recognize the advisory and intermediary nature of the service provider.

We trust this is helpful in moving the process further and are available to discuss any or all aspects of these suggestions at your convenience.

Yours very truly,



Paul M. Lavelle,
Managing Director and CEO
416.642.5222



R. Craig Gibson,
Managing Director and CCO
416.642.5278

Proposed National Instrument 31-103
Appendix A:

Mergers, Divestitures, Acquisition and Financing Services (“MDA & F Services”) are defined for this purpose to be one or more of the following services:

- a) Divestitures: In these assignments the LMD is retained by either a public company Board of Directors or a private company owner(s) to act as an agent in selling all or a significant portion of the shares or assets of the business. Services provided are consulting in nature and consist of preparing the company for sale, analysis leading to type of sale process, the likely buyers and scope of sale process. Some sale processes would be local in nature others national and some international. Typically the LMD creates an Information Memorandum not dissimilar to a private placement memorandum and assembles all relevant data in a data room (electronic or paper). Prospective buyers are interviewed, introduced to the owners and management and typically commence due diligence to determine the worth of the company and the potential fit. Generally this due diligence is carried out by the buyers management with the assistance of legal counsel, accounting professionals, other corporate finance experts and other industry experts. The LMD’s job is to manage this process for the benefit of his/her client and to ultimately dispose of the assets or shares for fair market value. The LMD does not take possession of any assets or shares during the process and although a key advisor to the seller will not typically be the only advisor. The sale is completed once a formal purchase and sale agreement is negotiated, signed and closed. Timeframes can range from 3 months to many years for this process. Typical counterparties to a transaction would be strategic parties (such as companies in similar or complimentary industries), private equity firms, banks, insurance companies and other institutional investors or lenders. Again, Firms providing MDA & F Services do not handle or take possession of securities or client funds. Compensation for these services can be based on an hourly rate but more typically there are based on a monthly retainer together with a completion fee payable in the manner detailed in a formal engagement letter. The completion fee can be a percentage of the sale proceeds or a graduated percentage increasing as values are increased. LMD’s are advocates for their clients and represent them in that process.
- b) Acquisitions: Similar to the divestiture process noted above the firms act on behalf of a buyer to seek out operations (assets or shares) which meet the objectives of the client. This will require research at the outset of the job to determine the objectives of the client and to attempt to match those objectives with firms in either a similar industry or geography or complimentary line of business. Again, the LMD is acting in a financial advisory role to assist the client in reaching their corporate goals. Generally the LMD is responsible for coordinating the use of other experts such as lawyers, valuation and accounting professionals and industry experts to assist in determining the value, type of consideration and structure of any purchase. Again, the LMD does not take

possession of any assets or securities of the buyer or the seller and is acting as a lead financial advisor in the process. The fees paid in this circumstance can be hourly or typically they are a combination of fixed monthly fees and a fixed completion fee. In some circumstances the completion fee will be tied to the value of the property purchased. In some instances the LMD will also be responsible for seeking and negotiating financing to complete the transaction and this financing could be debt, sub-debt or equity in form.

- c) **Financing:** The last major area of service is the seeking of financing on behalf of a client. This may be in conjunction with an acquisition or it may simply be replacement or growth capital for the existing business. The process undertaken is similar to the divestiture in that typically an Information Memorandum is developed which describes the needs of the client corporation. This package of information is then circulated on a confidential basis to a number of selected parties such as financial institutions, private capital providers and speciality leading institutions. After a period of due diligence by all parties a term sheet is prepared and delivered by the financial institution to the LMD and his or her client. Term sheets are then negotiated and lending agreements or other documents entered into to complete the financing. Again, legal counsel and other advisors are used throughout the process to ensure all interests are well represented and protected. Fees payable to the LMD's for these types of assignments are generally monthly retainers with a success fee driven off the level and type of financing received.
- d) **Advisory Services:** Other services provided by MDA & F LMD's include valuations, fairness opinions and other strategic advice aimed at growing or enhancing the results of the client.