Assante
WEALTH MANAGEMENT

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MEMORANDUM

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
Superintendent of Securities, Newfoundland and Labrador
Registrar of Securities, Northwest Territories
Registrar of Securities, Yukon Territory
Registrar of Securities, Nunavut

FROM: Frank Hurst
Chief Compliance Officer
Assante Wealth Management

RE: **Public Comment – Registration Reform Project – Proposed National Instrument 31-103 – Registration Requirements**

DATE: June, 2007

Dear Sir/Madam,

Please accept this document as our comment on the proposed **NI 31-103 – Registration Requirements,** provided on behalf of Assante Wealth Management (AWM) Ltd., in response to your invitation for comment.

Thank you in advance for your consideration of these comments. If you wish to discuss these further, please do not hesitate to contact myself, Frank Hurst @ 416-681-1432.

Thank you.

Frank Hurst
Chief Compliance Officer
Assante Wealth Management

A. CSA Questions & AWM Comment

Categories of Registration and Permitted Activities

Question # 1 – What issues or concerns, if any, would your firm have with the proposed fit and proper and conduct requirements for exempt market dealers? Please explain and provide examples where appropriate.

No Comment

Question # 2 – The British Columbia Securities Commission seeks comments on the relative costs and benefits in British Columbia of harmonizing with the other CSA jurisdictions to create an exempt market dealer category and in doing so, eliminating the registration exemptions for capital-raising transactions and the sale of those securities, referred to in some jurisdictions as "safe securities" (i.e., government guaranteed debt).

No Comment

Question # 3 – Registration for managers of all types of investment funds (other than private investment clubs) is proposed. Are there managers of funds for which the risks identified are adequately addressed in some other way and therefore registration as a fund manager may not be necessary? If so, please describe the situation.

No Comment

Question # 4 – Registration of the UDP and CCO is proposed. As well, we propose that the UDP be the senior officer in charge of the activity carried on by a firm that requires the firm to register. What issues or concerns, if any, would your firm have with these registration requirements? Do you think the registration of the UDP and CCO contributes or detracts from a firm wide culture of compliance? Please explain

Comment

- Registrant compliance with securities laws/rules is dependent upon the supervisory activities of the entire firm. Would registration of the CCO make him/her unfairly responsible for the actions (or inaction) of others where s/he may not have influence/control over the outcome?

- Escalation of the profile of the CCO, via registration, could further contribute to the development and affirmation of a culture of compliance within a firm.

- No unreasonable barriers to registration should exist as a result of this change. Firms must recruit and retain those persons with the requisite skills/experience for the role of CCO. In lieu of a prescriptive approach to proficiency, regulators might impose a specific duty upon firms to show due diligence in the recruitment of qualified staff. In this way, firms may retain qualified staff to meet their requirements and open up career opportunities to qualified candidates. Accreditation as a lawyer or Chartered Accountant is no guarantee of proficiency, as many compliance professionals move to/within compliance along different career paths. In addition, where a current CCO has a great deal of experience,

grandfathering with respect to new courses (e.g., the pending CCO course), for a limited transition period, might be considered.

- Requirement that the UDP be CEO or an "officer in charge of a division…" limits the ability of registrants to designate other senior executives, where decision-making authority may reside (e.g., with CFO and/or COO), as the UDP. The Investment Dealers Association (IDA) By-Law 38 permits such a designation.

Question # 5: The Rule proposes an associate advising representative category for portfolio managers but not for restricted portfolio managers because the restricted portfolio manager category is intended for individuals who have expertise in a specific industry. Is the concept of an associate advising representative useful in the context of a restricted portfolio manager? If so, why?

No Comment

Question # 6: We discussed but have not proposed registration of senior executives and directors (i.e., the mind and management) of a firm. Registration would assist the regulators in being able to deal directly with this group of people rather than indirectly through the firm. Please provide us with comments on what positions in a firm should be considered part of the mind and management and what issues or concerns you or your firm would have with registration of individuals in those positions.

Comment

- Propose requirement to register the "mind and management" of the dealer. This approach permits the IDA to take direct action against the firm and prevent unfit persons from serving in an executive position. The absence of such a requirement for non-executive officers would permit the IDA to proceed with a proposal to require approval only of officers who are involved in the management of the firm.

- Registration of those in a position to materially impact the operation of the firm should assist in cultivating a culture of compliance.

Question # 7: The proposed exemption applies to advisers who are actively advising and managing their clients' fully-managed accounts. The exemption has not been extended to advisers dealing in securities of their own pooled funds with third parties. If there are circumstances in which you think it would be appropriate to extend the exemption to third parties, please describe.

No Comment

Question # 8: The Rule requires dealers, advisers and fund managers to have Financial Institution Bonds. In cases where the owners of the firm also carry out the operations and registerable activity of the firm, usually in small firms, are these bonds prohibitively costly to obtain and will the bonds provide coverage if they are obtained in these situations?

No Comment

Question # 9: We propose that some requirements of Division 1 not apply to clients that are accredited investors as defined in NI 45-106 Prospectus and Registration Exemptions. Is it appropriate to exclude this group, or any other group, of clients from the account opening requirements?

No Comment

Question #10: What issues or concerns, if any, would your firm have with the proposed relationship disclosure requirements? Is this type of requirement appropriate for some or all types of accredited investors? If so, what information would be useful to have in the relationship disclosure document?

Comment

- Support proposed rule.

Question #11: Is the prescribed content for a confirmation the appropriate type of information?

Comment

- Support proposed rule.

Question # 12: The Rule requires a registered firm to identify and deal with all conflicts. Would a materiality concept be appropriate within the requirement or should that be dealt with at the firm level within the firm's policies? (Part 6)

Comment

- Inclusion of a materiality test would provide firms with guidance, and a regulatory reference, as to the appropriate focus for a conflicts of interest policy.

- Guidance is required with respect to what types of conflicts of interest must be identified (potential and actual), particularly between clients? To what extent do regulators require we identify conflicts between clients. For example, if two clients are in competition with each other professionally, and an Advisor serves both, is this a conflict?

Question # 13: Is our description of the risks of referral arrangements complete and accurate? If not, what is missing?

Comment

- In s. 6.14, reference is made to the registrant taking "reasonable steps" to confirm that a referral partner has the appropriate qualifications to provide their service(s) and that such a referral partner is appropriately registered (where applicable). Further guidance needs to be provided as to the definition of "reasonable steps". What kind of due diligence is expected? Is this due diligence ongoing or expected only at the initiation of a referral relationship?

Question # 14: One objective of NI 45-106 was to have all exemptions in one instrument. As mentioned, we have included the registration exemptions in the Rule for purposes of obtaining comments on the exemptions that are being proposed under a business trigger. Would you prefer the registration exemptions remain in NI 451-06 or be moved into the Rule?

No Comment

Question # 15: Is 120 days sufficient to allow registrants with existing referral arrangements to comply with the Rule? If not, what length of time is sufficient? Please explain.

Comment

- Rule requires clarification as to whether dealers are required to re-paper existing referral arrangements.

Question # 16: A matter not dealt with in the Rule but one which relates to registrants and NRD is the annual fee payment date. Comments have been made by some industry participants that a December 31 fee payment date is problematic and that a May 31 fee payment date would be better. Please comment on whether a May 31 or December 31 annual fee payment date is better for your firm.

No Comment

B. Additional Comment

Individual Categories [S.2.6, ss. (b)]

- Support additional regulatory guidance for MFDA proposal to continue to permit the principal-agent model with directed commissions (i.e., payments to incorporated salespersons).

Suitability [S. 5.4, ss. (2)]

- The requirement that a registrant inform a client that a trade is unsuitable, in advance of a trade, where the registrant is of this view is in conflict with IDA rules. Firms granted order-only execution do not screen for suitability and institutional clients are deemed to be sufficiently informed to determine suitability. (Reference rules – Regulation 1300, Policy 9)

- What evidence do regulators expect a registrant to maintain with respect to satisfying this requirement?

Time limits on examination proficiency (S.4.2)

- Propose removal of the requirement to re-write an exam after a lapse in registration, where a former registrant applies for a similar post in the future. Suggest that the dealer assume responsibility to ensure that employees or agents show sufficient proficiency to carry out their role, without a requirement to re-write a course, where a course has lapsed. This would permit a registrant, with a significant deal of expertise/experience, to act in a registered capacity, without re-writing a course or seeking an exemption from an examination re-write.

Know-Your-Client (S. 5.3, ss. (2))

- Reference is made to taking "reasonable steps" to ascertain a client's identity. Additional guidance as to what regulatory expectations are of these steps would be useful. For example, per 5.3, ss.1 (a), how would a registrant establish the "reputation" of a client?

Records – form, accessibility and retention

- Is the distinction between "relationship record" and "activity record" useful? A number of additional questions may be considered in review of this proposed rule, they are as follows:

    - Would it be more practical to require that all records be retained for 7 years after termination of the relationship (or after closure of an outstanding complaint/litigation, whichever is more recent)?

    - Should a legal need arise to review records, it may be necessary for the firm to review all records. Does setting such a distinction impose an

unreasonable expectation on the registrant to sort all client documents into two files, especially upon termination/resignation of the representative?

- It is possible that some records (such as client notes/e-mails) may include both relationship and activity data, how should such records be handled? Would there be an expectation to "black-out" information not required? Would failure to black-out data place a registrant offside federal privacy legislation?

Non-Resident Registrants (S. 5.33 – 5.37)

- There is a need to define "non-resident". Is this section meant to apply to clients outside of Canada or those in a province other than the one in which the registrant resides? Would additional proposed disclosure requirements be of a material benefit for eligible clients in Canada?

Information Sharing (Part 8)

- The requirement of a registered firm to disclose, upon request of another registered firm, personal information with respect to a former employee's request to become registered at the new firm poses serious challenges. These challenges are outlined as follows:

  - Civil Liability. This proposed rule exposes the former dealer to possible civil liability claims, where a former employee is of the view that release of employment information at one dealer resulted in the refusal to hire by another dealer. In addition, there is also the possibility for the new firm to consider litigation against the former firm, where a positive recommendation is made by the former employer and such a recommendation is not substantiated by the new employee's performance.

  - Potential for abuse. Litigation risks aside, the opportunity for abuse is great, as the scope of what may be considered material information could encompass almost anything. Where an employee leaves under difficult circumstances (e.g., a personality conflict), this proposed legislation could hinder their opportunity for a fresh start, where the new employer requests such information of the former employer. The former employer is free to provide whatever unverified information as necessary, to support or bring about harm, to the person's career.

  - *Privacy.* This proposed rule is in conflict with the spirit of federal privacy legislation, that being the *Personal Information Protection and Electronic Documents Act* (PIPEDA). This legislation is established to safeguard personal information held and managed by commercial entities. Where a commercial entity is in possession of such information, this information may only be released with consent, except as prescribed. Section.8.1, ss. 2 of this rule lacks the necessary safeguards to protect a former employee from the potential for the release of personal information, be it material or otherwise, for a malicious or deceitful purpose, by a former employer.

- Going forward, regulators might consider the following as an alternative:

    - Regulatory body is responsible for registrations and retains responsibility for assessment of a person's fitness for registration (or re-registration).
    - Former registered firm discloses all pre-defined information to the regulator upon a registrant's departure.
    - Regulator provides assessment of this information and, based on this initial assessment, grants re-registration, requests additional information and/or places conditions upon future registration.

Complaint Handling - Reporting to the regulator or securities regulatory authority (s. 5.32)

- Members of the IDA are required to regularly report client complaints. In review of this proposed rule, a number of questions may be considered, they are as follows:

    - Is it necessary to require registrants, who may report client complaints to a central regulatory authority already, to also file the same reports with provincial securities administrators? For example, MFDA Members report complaints via METS and IDA Members report complaints through COMSET. Will there be an exemption provided to Members of an SRO where such a reporting requirement already exists?

    - Is this proposed filing requirement of sufficient benefit to the investor, particularly where a central authority, such as the IDA, is required to forward relevant queries to a provincial regulator?

    - Would all types of complaints be forwarded or just specific types?

    - How would an Advisor's registration affect the requirement to file? For example, would the registration of the Advisor impact what complaints are reported and to which regulator? Would a complaint from a Newfoundland client be submitted to Saskatchewan, where the subject of the complaint, the Advisor, is living in Saskatchewan, while s/he is registered in Newfoundland (and possibly also registered in other jurisdictions)?

    - In lieu of this new complaint filing requirement, would it be useful to require registrants to advise clients of the option to lodge a complaint with the regulator directly. This would be in addition to the mandatory complaint process disclosure required of Members of the IDA and Mutual Fund Dealers Association of Canada (MFDA).

Statement of Account and Portfolio [S. 5.25, ss. (1)]

- Additional guidance would be helpful with respect to the requirement to provide quarterly account statements. For example, similar to the exemption provided in S. 5.24 with respect to provision of trade confirmations, must registered dealers provide quarterly client account statements, where the investment fund manager of the mutual fund sends the same for a client name account.