SIFMA
Securities Industry and Financial Markets Association

July 2, 2007

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

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Dear Sirs/Mesdames:

Re: Comments on Proposed National Instrument 31-103 – *Registration Requirements*

I. INTRODUCTION

The Securities Industry and Financial Markets Association ("SIFMA") is pleased to comment on Proposed National Instrument 31-103 – *Registration Requirements* ("NI31-103"), issued for comment on February 23, 2007.

The Securities Industry and Financial Markets Association brings together the shared interests of more than 650 securities firms, banks and asset managers locally and globally through offices in New York, Washington D.C., and London. SIFMA was created through the merger between The Securities Industry Association and The Bond Market Association. Its associated firm, the Asia

Securities Industry and Financial Markets Association, is based in Hong Kong. SIFMA's mission is to champion policies and practices that benefit investors and issuers, expand and perfect global capital markets, and foster the development of new products and services. Fundamental to achieving this mission is earning, inspiring and upholding the public's trust in the industry and the markets. (More information about SIFMA is available at http://www.sifma.org.)

SIFMA members have a direct interest in NI31-103 because of the tremendous amount of cross-border securities activities undertaken by SIFMA members in Canada. Many of the approximately 650 securities firms, banks and asset managers which are members of SIFMA are registered in Canada, particularly under the "international" categories in Ontario. In addition, a significant number of the SIFMA members rely on certain currently available dealer exemptions contained in Canadian provincial and territorial securities legislation to access the Canadian capital markets and provide services to Canadian-resident investors.

SIFMA supports and advocates for harmonization of rules at the "international" level including: the adoption of international standards and rules; the mutual recognition of regulation in developed markets; and the international regulatory convergence of securities laws. Indeed, on June 11, 2007, SIFMA submitted a letter to SEC Chairman Christopher Cox with respect to facilitating cross-border capital markets transactions where we urged the SEC to pursue greater coordination of regulatory approaches through mutual recognition of securities regulatory regimes.[1]

SIFMA members support the efforts of the Canadian Securities Administrators ("CSA") at harmonizing and streamlining the Canadian rules and regulations as the current Canadian rules relating to dealer and adviser registration are fragmented and inconsistent in the Canadian provinces and territories. As a general matter, SIFMA strongly supports "national" rules and a single securities regulator in Canada.

II. NEGATIVE EFFECTS OF NI31-103 ON NON-CANADIAN DEALERS AND ADVISERS

SIFMA members have several major concerns with NI31-103 including: (i) the reversal of recent positive regulatory developments in Canada, (ii) the removal of existing, commonly used exemptions, (iii) the introduction of significant new restrictions on non-resident dealers and advisers, and (iv) the lack of recognition of home country regulation of non-resident dealers and advisers. SIFMA members submit that NI31-103 will have a negative effect on cross-border trading and advising activity by making it more difficult for Canadian investors to use the services of U.S. and international dealers and advisers. This will mean less choice for Canadian investors and less competition and innovation in the Canadian capital markets.

III. SUMMARY OF COMMENTS

For the reasons stated in this letter, SIFMA's main comments are the following:

1. The CSA should adopt the existing "accredited investor" dealer registration exemption available in certain provinces as a national exemption and consider harmonizing this exemption with U.S. standards.

2. The CSA should also provide a national exemption for advisers to provide advice to sophisticated investors which is consistent with the dealer exemption.

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[1] SIFMA letter dated June 11, 2007 to the SEC re: "Facilitating Cross-Border Capital Markets Transactions".

3. The CSA should eliminate the "flow through" analysis that requires U.S. and international advisers and fund managers to investment funds that are distributed in Canada to satisfy or be exempt from adviser and investment fund manager registration requirements.

4. The CSA should also work towards harmonizing the Canadian rules on exchange-traded futures and options thereon as these products are a very important aspect of cross-border trading and involve many of the same clients as for securities activities.

5. The CSA should delete the prohibition relating to trading or advising with respect to Canadian securities in sections 9.13 and 9.14 of NI31-103.

6. The CSA should delete the prohibition on solicitation in section 9.14 of NI31-103.

7. Transitioning or grandfathering provisions should be clear, provide adequate time to adjust to any new rules and permit the retention of existing clients.

8. SIFMA submits that requiring registration of non-Canadian broker-dealers and advisers that are regulated in their home jurisdictions is unnecessary and only adds regulatory costs to conducting securities trading and advising activities with Canadian clients. Instead, the CSA should pursue a coordinated effort in conjunction with the SEC to promote mutual recognition of each other's securities regulatory regimes.

IV. SIFMA COMMENTS

As a general policy matter, the regulatory switch under NI31-103 from a "trade" trigger to a "business" trigger is not a major concern as SIFMA members, virtually by definition, are in the securities business. However, a few specific trade exemptions that are proposed to be removed are of significance to SIFMA members, in particular, exemptions for employee stock option plans and trades with friends and family.

Comments Related to Dealers

The primary effects of NI31-103 on non-Canadian dealers are:

- elimination of the "international dealer" registration category in Ontario;
- repeal of the dealer registration exemptions contained in NI45-106, including the exemption for trades with an "accredited investor";
- introduction of a national "international dealer exemption" that significantly narrows the list of clients and type of securities with whom a non-Canadian dealer may trade on an exempt basis; and
- introduction of an "exempt market dealer" registration category that imposes significant new "fit and proper" requirements on dealers while permitting Canadian and non-Canadian dealers to trade with persons or companies to whom a security may be distributed under a prospectus exemption (for example, trading with "accredited investors").

Under NI31-103, a non-Canadian dealer that has no establishment in Canada may rely on the international dealer exemption to trade with a narrow list of "permitted international dealer clients" when trading in "foreign securities" and certain Canadian debt securities. The practical effect of the proposed international dealer registration exemption is to very significantly narrow the list of clients with whom a non-Canadian dealer is permitted to trade on an exempt basis and to require registration as an "exempt market dealer" as a condition to trading with the full range of "accredited investors" with whom they are presently permitted to trade in most Canadian provinces. Furthermore, the dealers

using this exemption would be required to appoint agents for service of process in each of the Canadian provinces and provide specific notifications to each client. SIFMA submits that these requirements are not necessary for SEC, FSA and other firms because of existing Memoranda of Understanding[2] with the CSA.

Non-Canadian dealers that are presently registered as international dealers in Ontario will no longer be permitted to trade with the following clients in Ontario under the proposed international dealer exemption:

- a person or entity that has net assets of C$5,000,000 (note: this category was used by international dealers to trade with corporations and hedge funds);
- an investment fund that is not advised by a person registered as a portfolio manager in Canada;
- a registered charity; or
- a person in respect of which all of the owners of interests, direct, indirect or beneficial, are persons that are accredited investors.

Under the proposed international dealer exemption, non-Canadian dealers will be restricted to trading only in "foreign securities," and in certain Canadian debt securities in the secondary market. Presently, a non-Canadian dealer may trade in both Canadian and non-Canadian securities on a dealer registration-exempt basis with an "accredited investor" resident in most provinces and territories, other than Ontario. The "foreign securities" restriction is a requirement presently applicable only to registered international dealers in Ontario.

SIFMA submits that the elimination of the accredited investor dealer registration exemption in most provinces/territories and the elimination of the "international dealer" registration in Ontario is not warranted in the context of U.S. and international firms that are regulated or exempt in their home jurisdictions. As only one example, SIFMA submits that the elimination of the longstanding ability of U.S. and international firms to deal with corporations that meet a net assets test is not a necessary reform. In this respect, NI31-103 as proposed is seen by SIFMA members as a major step backwards in the regulation of non-resident firms by the CSA. Furthermore, the registration requirements for an exempt market dealer are significantly more onerous than the international dealer or non-resident limited market dealer registration requirements.

SIFMA notes that the SEC has recently proposed a series of amendments in this area. These proposed changes effectively increase the monetary thresholds to qualify as "accredited investors" in the U.S. Among other changes, the SEC has proposed that the existing definition of "accredited investor" in Regulation D be amended to add a new category of accredited investors for individuals who own US$750,000 in investments and institutions that own US$5 million in investments. Under the proposed amendment, the SEC would adjust the financial thresholds set forth in the definition of "accredited investor" for inflation on a going-forward basis, beginning on September 1, 2012.

SIFMA submits that if a dealer is subject to primary regulation by the NASD, FSA or similar body that imposes capital, insurance, CCO, UDP and other similar requirements additional Canadian regulation is redundant. SIFMA further submits that the CSA should recognize their global peers and the parallel regulatory requirements and work towards developing a system of mutual recognition for firms that are regulated by the NASD, FSA and other comparable securities regulatory authorities. For example, SIFMA submits that the proposed prohibition on exempt market dealers lending or extending

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[2] For example, see the original Memorandum of Understanding dated January 7, 1988, between the SEC and the securities commissions in Ontario, Quebec and British Columbia.

credit is unnecessary for firms regulated in the U.S., U.K. and under other comparable regulatory regimes.

Comments Related to Advisers

The primary effects of NI31-103 on non-resident advisers are:

- elimination of the "international adviser" registration category in Ontario;
- repeal of OSC Rule 35-502 Non-Resident Advisers;
- introduction of a national "international portfolio manager" exemption that is significantly narrower than the international adviser registration and contains a solicitation restriction;
- introduction of a "portfolio manager" registration category; and
- introduction of a statutory sub-adviser exemption in all provinces.

Under NI31-103, a portfolio manager that has no establishment in Canada and is registered in the jurisdiction in which its head office or principal place of business is located, may rely on the international portfolio manager exemption to act as a portfolio manager for a narrow list of "permitted international portfolio manager clients". In order to rely on the exemption, a portfolio manager cannot solicit new clients in Canada, cannot advise on Canadian securities, cannot derive more than 10% of gross revenues from its portfolio management activities in Canada and must file submission to jurisdiction forms and deliver client notifications.

In Ontario, the practical effect of the proposed international portfolio manager exemption and the elimination of the international adviser registration category is to narrow significantly the list of clients whom a currently registered international adviser in Ontario is permitted to advise. Non-resident advisers who are registered as "international advisers" in Ontario will no longer be permitted to advise the following categories of clients if they rely on the proposed international portfolio manager exemption:

- a portfolio manager acting as principal or agent for accounts fully managed by it;
- a broker or investment dealer acting as principal for accounts fully managed by it;
- a registered charity;
- an individual who has a net worth of at least C$5 million, excluding the value of his or her principal residence, or any person or company legally and beneficially owned by such individual;
- a corporation that has shareholders' equity of at least C$100 million; or
- a fund that distributes securities in Ontario to persons or companies referred to above.

While SIFMA supports the introduction of an "international portfolio manager" exemption in all Canadian provinces and territories, we submit that the exemptions for international dealers and advisers should be harmonized as many products and services are, in effect, hybrid services and the exemptions are based on the sophistication and/or net worth of the clients and not the services being provided. Furthermore, in our view, the condition that new clients not be solicited will eliminate the usefulness of this exemption, particularly in the context of the Canada-U.S. market.

As noted above, SIFMA submits that recognition should be given by the CSA to the home country regulation of US/international advisers. For example the proficiency requirements of the U.S., U.K. and under other comparable regulatory regimes should satisfy any applicable Canadian requirements. SIFMA submits that the current process of obtaining "proficiency equivalency waivers", for example, for Ontario "non-Canadian adviser" registrations and Alberta "foreign adviser"

registration, is very slow and out-of-step with current business practices. Similarly, Canadian custody requirements should be more accommodating to international standards and practices.

SIFMA recommends the elimination of the "flow-through" jurisdictional analysis that would require international portfolio managers and international fund managers to register in Canada solely because fund units are sold in Canada.

Comments Related to Futures

SIFMA submits that it is very important to also harmonize and streamline the regulation of exchange-traded futures across Canada. While we understand the regulatory and statutory challenges in this area, SIFMA submits that the overall effectiveness of NI31-103 will be diminished if the rules regulating futures are not harmonized with the securities rules. SIFMA recognizes the work being done in the futures area by the Ontario Commodity Futures Act Advisory Committee[3] and by the Autorité des marchés financiers ("AMF")[4] and urges the CSA and others to work towards harmonizing the Canadian rules.

SIFMA encourages the CSA to consider providing an "accredited investor" exemption for dealers and advisers with respect to exchange-traded futures. SIFMA notes that in the U.S. certain Canadian dealers and advisers may apply under Part 30 of the Commodity Futures Trading Commission ("CFTC") rules which would permit foreign futures and options to be offered or sold in the U.S. based on regulatory standards similar to those that apply to U.S. transactions.

Comments Related to Transitional Issues and Grandfathering

In light of the significant changes that the proposal envisages, "transitional" issues are critically important and need to be addressed. Despite the major impact that NI31-103 will have on the ability to do cross-border business in Canada, the proposal does not set out any grandfathering or other transitional relief. Transitional rules will be very important for dealers, advisers and all market participants as there is the potential for significant disruption to existing client relationships if NI31-103 is adopted as proposed. Consequently, SIFMA submits that Canadian investors and their existing dealers and advisers be afforded a lengthy transition period. We also respectfully urge the CSA to consider grandfathering as an approach that would provide dealers and advisers, and their Canadian customers with an effective manner to produce certainty and a continuation of existing business relationships.

Draft Legislation

Because of the technical nature of many of the provisions of NI 31-103, SIFMA submits that it would be very useful to see draft legislative changes as early in the process as possible.

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[3] Final report of the Ontario Commodity Futures Act Advisory Committee dated January 2007 to the Honourable Gerry Phillips, Minister of Government Services and Minister Responsible for Securities Regulation.

[4] Report of the Autorite' des marche's financiers entitled "Regulation of Derivatives Markets in Quebec" (May 1, 2006).

V. RESPONSES TO CERTAIN CSA QUESTIONS

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.

SIFMA members do not support the imposition of Canadian "fit and proper" requirements on non-resident dealers and advisers that are already subject to extensive regulation in their home jurisdictions. SIFMA believes that proficiency requirements, capital and insurance adequacy, compliance requirements, financial statement filing requirements, custody and other requirements are adequately addressed by US, UK or other regulatory regimes and that the imposition of these requirements on such entities is redundant and does not have any investor protection benefits. Consequently, SIFMA advocates that the CSA pursue mutual recognition with the SEC and other regulators in appropriate jurisdictions.

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).

SIFMA members would prefer to have a uniform set of rules across the Canadian provinces and territories. SIFMA believes that from a regulatory perspective it is preferable to focus on the type of investor rather than focusing on which securities are considered "safe securities". The CSA should provide dealer and adviser exemptions for a class of investors that do not need investor protection regardless of the type of product (i.e., "accredited investors"). This approach also provides legal certainty with respect to the development of new products since the registration requirements would not be dependent on a product-by-product analysis.

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.

SIFMA believes that Ontario should discontinue the use of the "flow through" analysis with respect to investment funds that have Ontario-resident investors. The CSA should clarify that non-Canadian advisers and investment fund managers of investment funds are not required to register in Canada merely because units of an investment fund are purchased by Canadian investors. To this end, SIFMA believes that sections 9.2, 9.15 and 9.16 of NI31-103 should be deleted and there should be no requirement for an investment fund to register as an adviser or a dealer to privately place securities with "accredited investors".

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 to or detracts from a firm wide culture of compliance? Please explain.

For the reasons stated above, SIFMA favours an approach that exempts its members from the "fit and proper" requirements contained in NI31-103. As such, SIFMA believes that it is unnecessary to impose a separate UDP and CCO requirement on non-Canadian dealers and advisers that are otherwise registered in their home jurisdictions.

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.

SIFMA does not believe that it should be necessary to register senior executives and directors of a non-Canadian dealer or adviser that is otherwise regulated in its home jurisdiction.

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.

SIFMA believes that non-Canadian advisers, whether an adviser to an investment fund or fully-managing accounts, should not be required to register as dealers so long as the units of those funds are only distributed to "accredited investors".

VI. POLICY VIEWS

SIFMA members are concerned that NI31-103 represents a significant reversal of recent positive developments in the Canadian capital markets, particularly in light of the fact that we understand that there have been no major compliance/regulatory issues regarding the participation of non-resident dealers and advisers in the Canadian market. SIFMA is concerned that efforts to harmonize, streamline and address certain Canadian domestic capital market issues have resulted in a very significant proposed re-regulation of non-resident dealers and advisers participating in the Canadian market.

During the last few years, Canadian provincial and territorial securities regulatory authorities have implemented some favourable rule changes which are of importance to SIFMA members. These changes included:

(a) Adoption of National Instrument 45-106 – *Prospectus and Registration Exemptions* ("NI45-106") that created a national (except Ontario, Newfoundland and Labrador and the Yukon Territory) exempt market for dealing with "accredited investors", and

(b) Decision by the Ontario Securities Commission ("OSC") to permit non-Canadian firms to be registered as "limited market dealers".

In addition, the elimination by the Canadian Federal government of "foreign property" restrictions on Canadian pension plans and retirement plans has permitted Canadian pension plan and retirement plan monies greater access to international/global markets. As a direct result, many SIFMA members are much more active in the Canadian market and Canadian investors are actively seeking SIFMA members' products and services.

These developments have led to increased participation by non-resident dealers and advisers in the Canadian market. Canadian investors have benefited by having more investment choices and from greater competition.

SIFMA members believe that NI31-103 as proposed will harm Canadian investors by (i) limiting access to foreign securities and expertise, (ii) burdening non-resident dealers and advisers with redundant and unnecessary regulatory oversight and rules, and (iii) increasing the costs of

conducting business with Canadian resident investors. With the increasing globalization of the world's financial markets SIFMA members believe that it is imperative that Canada not be seen as constructing barriers to entry into the Canadian capital markets and that Canadian investors have reasonable access to non-resident dealers and advisers and their services and products.

Indeed, the Canadian Minister of Finance, the Honourable James Flaherty, as part of the March 19, 2007 Canadian Federal Budget initiated the Capital Markets Plan which sets forth four building blocks to secure a competitive advantage for Canada in the global capital markets. These building blocks are:

1. Enhancing Regulatory Efficiency;

2. Strengthening Market Integrity;

3. Creating Greater Opportunity for Business and Investors; and

4. Improving Investor Information.

These four building blocks echo SIFMA's mission to champion policies and practices that benefit investors and issuers, expand, and perfect global capital markets, and foster the development of new products and services and to earn, inspire and uphold the public's trust in the financial services industry and the global capital markets.

The Canadian Federal Government further stated that it is seeking to promote "free trade in securities". In the recent Budget, it was stated that Canada is "spearheading discussions to eliminate barriers to free trade in securities…" citing bilateral discussions with the United States and multilateral discussions in the broader G7 forum. The budget report further stated:

> *"At their recent meeting in Essen, Germany … G7 Finance Ministers committed to further liberalize cross-border capital markets by exploring '… free trade in securities based on mutual recognition of regulatory regimes'.*
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> *Through the Multijurisdictional Disclosure System (MJDS), Canada and the United States already practise mutual recognition of the disclosure requirements for qualifying companies extending their securities offerings to each other's capital markets. Canada's New Government proposes to build on the success of the MJDS in increasing the efficiency of cross-border access to capital for issuers by extending mutual recognition to exchanges and brokers, founded on a shared commitment to high standards of investor protection.*
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> *Under current rules, a number of regulatory barriers impede the free flow of capital, especially cross-border securities trading, adding distortions and costs. Further liberalization of global capital markets based on mutual recognition of the regulatory regimes governing securities would allow:*
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> - *Canadian investors to directly access securities listed on foreign exchanges through a Canadian or a foreign broker, where the foreign exchange or the foreign broker is recognized by Canadian regulators as being regulated in an acceptable manner for investor protection.*
> - *Foreign investors in all participating jurisdictions to invest directly in securities listed on Canadian exchanges such as the*

> *TSX and TSX Venture Exchange through their domestic broker or a Canadian broker.*
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> *Effective investor protection would be at the core of any possible framework, as would legal and information-sharing arrangements that support effective enforcement and redress. Under mutual recognition, the laws of the jurisdiction in which the exchange is located would protect investors. Exchanges and brokers would be governed by the laws in their home jurisdiction and issuers by the laws of the jurisdiction in which their securities are listed. Securities regulators in the various jurisdictions would be active participants in the development in implementing of agreements under the new framework.*
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> *Free trade in securities would raise diversification opportunities and returns for investors. Competition between market participants (such as stock exchanges and brokers) would increase efficiency and lower investment and trading costs, resulting in lower capital costs, and encourage economic growth."*

SIFMA supports the efforts of the Canadian Federal government and the regulatory initiatives and approaches described above.

We also note that the United States Securities and Exchange Commission has indicated recently that it will consider allowing non-US dealers access to US-resident clients without dealer registration when dealing in foreign securities.

SIFMA members also are of the view that Proposed National Instrument 11-902 – *Passport System* ("Passport System") does not go far enough in its efforts to harmonize the Canadian rules. We support the OSC's decision to opt-out at this time for the OSC's stated reasons. SIFMA members believe that each of the CSA member regulators should align their regulatory views with the stated positions of the Canadian Federal government, the OSC and many others and work towards a national (or common) securities regulatory authority which will operate under one set of rules that are applied consistently.

VII. EXISTING REGULATORY ENVIRONMENT FOR INTERNATIONAL FIRMS IN CANADA

The following is a brief summary of how non-Canadian dealers and advisers currently participate in the Canadian capital markets.

SIFMA members, who are non-Canadian dealers or advisers, are typically registered in Ontario as international dealers, limited market dealers, international advisers and/or non-Canadian advisers.

In Ontario, non-Canadian dealers have historically registered as "international dealers" to trade with "designated institutions" in "foreign securities". Recently, a number of non-Canadian dealers that wish to trade in Canadian equity securities or trade with accredited investor individuals have registered as non-resident "limited market dealers" in Ontario. Outside Ontario, SIFMA members typically trade with "accredited investors" pursuant to NI45-106 in both Canadian and foreign securities in each province and territory of Canada, except Ontario, Newfoundland and Labrador and Yukon Territory, in primary distributions and secondary market transactions on a dealer registration and prospectus exempt basis.

From the adviser perspective, many SIFMA members have registered in Ontario as "international advisers" to advise "permitted clients" with respect to foreign securities pursuant to

OSC Rule 35-502 – *Non Resident Advisers* ("OSC Rule 35-502") and some have also registered in British Columbia and Alberta in a similar category of registration. Quebec securities laws contain an exemption for advisers who only provide advice to a specific list of clients (a limited institutional subset of accredited investors). Except for Quebec, most Canadian provinces do not have exemptions for the direct advising of Canadian clients, institutional or otherwise. In Ontario, some non-Canadian advisory firms have also registered as "non-Canadian advisers", which permits such firms to advise all types of clients with respect to both Canadian and non-Canadian securities, subject to full compliance with Ontario adviser rules.

Under the "flow-through" analysis, the OSC considers an adviser to be acting as an adviser in Ontario if it, directly or through a third party, acts as an adviser for an investment fund that distributes its securities in Ontario, notwithstanding that the advice to the fund may be given to, and received by, the fund outside of Ontario.

Because of the OSC's "flow-through" analysis and Ontario's universal dealer registration rules, the sale of securities of a non-Canadian investment fund in Ontario has typically been structured as a private placement of securities through an Ontario registrant so that the adviser to the fund can rely on the adviser registration exemption set out in Section 7.10 of OSC Rule 35-502. In this scenario, the adviser to the investment fund would be exempt from the adviser registration requirement and the investment fund would be sold pursuant to the prospectus exemptions in NI45-106. However, this is not always a desirable method for distributing securities as it requires the involvement of a dealer where the sophisticated investor has no need for the dealer's involvement.

In the other provinces and territories, there would be no registered dealer involved in the investment and the investment fund would sell securities directly to an "accredited investor" with no requirement for the adviser to the investment fund to be registered as an adviser or be exempt from the adviser registration requirement. The investment fund would file a Form 45-106F1 with applicable filing fees.

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We appreciate the opportunity to submit these comments.

Very truly yours,

David G. Strongin
Managing Director