LMDA
Limited Market Dealers Association of Canada

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

British Columbia Securities Commission
Alberta Securities Commission
Saskatchewan Financial Services Commission
Manitoba Securities Commission
Ontario Securities Commission
Autorié des marchés 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 Ontario Securities Commission
20 Queen Street West, 19th Floor, Box 55
Toronto, ON M5H 3S8
Attention: John Stevenson, Secretary

Dear Sirs and Mesdames

Re: Proposed National Instrument 31-103 *Registration Requirements*

This submission is made by the Limited Market Dealers Association of Canada ("LMDA") in reply to the request for comments published February 29, 2008 on proposed National Instrument 31-103 *Registration Requirements* ("NI 31-103").

Our comments are presented in the following order: general comments and specific comments on certain aspects of NI 31-103.

General Comments

We are supportive of the Canadian Securities Administrator's (the "CSA") Registration Reform Project to harmonize, streamline and modernize the registration regimes across Canada. We are concerned that (i) British Columbia and Manitoba are not adopting NI 31-103 and (ii) Manitoba is not adopting the "business" trigger for dealer registration under its securities legislation and that, as a result, the actions of the securities commissions in British Columbia and Manitoba will lead to a fractured registration environment across Canada.

We are pleased that the CSA have adopted a risk-based approach to the solvency and financial requirements with respect to exempt market dealers ("EMDs") and have amended NI 31-103 to reflect that approach. However, we are concerned that while the CSA have recognized the need for an exemption from some of the more onerous provisions of NI 31-103, they have effectively denied the majority of EMDs access to that exemption by including the activities of "handling" or "holding" a client's cheque or security certificate within the types of conduct that would not permit an EMD to use the applicable exemption.

We note that one of the purposes of NI 31-103 is to "reduce regulatory burden and increase regulatory efficiency." However, denying this exemption to EMDs will have the distinct opposite effect. The increased costs to an EMD that will result from the loss of this exemption do not appear to be justified by any real or apparent investor protection concerns with respect to the EMD industry. This was not a concern listed in Ontario Securities Commission ("OSC") Staff Notice 11-758 ("SN 11-758"), nor have the CSA provided any specific industry concerns from issuers or investors that support the level of regulatory burden NI 31-103 will impose for conduct such as merely providing normal transportation or custodial functions as part of a business transaction.

The LMDA respectfully submits that the risks associated with "handling" or "holding" a client's cheque made out to an issuer or the issuer's legal counsel have not been adequately evaluated by the CSA and considered in the context of the practical business realities involved.

Our membership has advised us that the working capital, financial institution bond, audit and account reporting requirements will increase the cost of operations prohibitively for EMDs that do not have access to client assets in an EMD's trust account such that many of these EMDs will have to exit the industry. We believe that denying EMDs an exemption from the solvency and financial requirements because of conduct such as "handling" or "holding" a client's cheque while delivering such cheque to an issuer is a significant oversight on the part of the CSA when designing NI 31-103.

Specific Comments

Fit and proper and conduct requirements

a) Proficiency Requirements for EMDs

Requirement	Current Requirement	Comment
Proficiency Requirements for an EMD include: (i) the Canadian Securities Exam or (ii) meet the requirement of a Portfolio Manager - Advising Representative (CFA Charter or Canadian Investment Manager designation)	None	(iii) We note that the grandfathering provisions of s. 4.16 only apply to dealers already registered in one of the enumerated categories of Division 1, Part 4 – *Proficiency Requirements*. We are concerned about the number of EMDs that have been operating in the industry for a number of years that will have to incur additional costs in time and money to comply with the EMD proficiency requirements. The CSA has not recognized the years of experience and practical education these EMDs possess that, in many cases, will surpass the proficiency requirements for the EMD category. Neither does this section provide for an exemption for EMDs whose educational proficiency has been gained through other education that may exceed that tested in the Canadian Securities Exam ("CSE"). Imposing the CSE on individuals who already possess suitable proficiency in the industry through experience or other education is an abuse of bureaucratic process and an expense in time and money that is not justified in these circumstances. While s. 9.1 of NI 31-103 and s. 4.4 of the Companion Policy allows the applicable regulator to grant an exemption from the proficiency requirements in s. 4.9, we are concerned that the CSA members will not have the resources required to not only process the influx of new registrations but also to process the influx of exemption applications, on a timely and adequate basis,

		that will accompany or follow these applications. (iv) The CSA members have failed to take into consideration that certain EMDs are mature individuals that have not been in an exam environment for several years. These individuals, because of age or concerns about writing exams years after completing their formal education, may wind up exiting the industry. We are concerned that the industry will lose a wealth of knowledge that cannot come through text books as a result of the implementation of this rule. As previously stated, we believe the CSA members should provide an exemption from the proficiency requirements for those individuals currently operating in the industry based on their current education and experience. (v) We are concerned that the CSA has failed to provide EMDs with any guidance as to (a) what other education (besides the CSE, a CFA or a Canadian Investment Manager designation) or (b) what practical experience will be considered by the CSA when processing an EMD's application for registration. We are concerned that the CSA has assumed that the CSE is the only form of education that can prepare and EMD to operate in the exempt market. The CSA has failed to recognize that there are other formal or practical educational experiences that can prepare an individual to be registered as and EMD. Given the formal education and practical business experience that many EMDs possess after years of operating in the industry, we believe that a more practical solution would be to grant EMDs registration under the NI 31-103 based on their current education and business experience. Thereafter, where the regulator can show that the business practises of an EMD are such that an order for remedial education (the CSE) is justified, the regulator should make such an order. Requiring all EMDs to have passed the CSE as part of the introduction of a new registration regime is merely introducing a barrier to entry into the EMD registration category of registration that is unjustified for existing EMDs. (vi) S. 10.1(2) provides that registered limited market dealers ("LMDs") will be deemed to be registered as EMDs upon this rule coming into force. S. 4.16 provides for an exemption from the applicable proficiency requirements of Division 1, Part 4 if the individual is already registered in the applicable category. For example a registered LMD would be exempt from the EMD proficiency requirements in s. 4.9 because they are deemed registered as an EMD pursuant to s. 10.1(2). However, s. 10.4 (5)limits that exemption to the 12 month period after NI 31-103 comes into force, after which time it would appear that the LMD will have to comply with the EMD proficiency requirements of s. 4.9. We note that Form 33-109 F4 requires disclosure of the proficiency qualifications of those individuals that have registered under the LMD category, therefore the applicable securities commissions would already have a record of proficiency requirements on file. Thus, it would appear that the proficiency requirement in s. 4.9 would only apply to certain LMDs whose proficiency is based on practical experience or education from sources other than the CSE. As mentioned above, we are concerned that if registered LMDs, whose proficiency is based on experience and/or other education, are not grandfathered under the provisions of s. 4.16 the applicable regulators will not be able to handle the number of applications for exemption from the proficiency requirements that will follow.

While the LMDA supports the concept of EMDs having a minimum level of proficiency, NI 31-103 will impact a significant number of individuals that have operated in the EMD industry for several years based on prior education or practical experience gained through years of operating in the industry. The "real life

education" these individuals have obtained has not been adequately considered by the CSA. We submit that the CSA should provide guidelines with respect to an exemption from the proficiency requirements of NI 31-103 for individuals that will now be required to register as an EMD. The LMDA supports the CSA in implementing proficiency requirements for new entrants in to the EMD category of registration, however we believe that CSA members should only impose the CSE on existing EMDs whose business operations indicate that remedial education (the CSE) is warranted.

b) Solvency and Financial Record Requirements

Requirement	Current Requirement	Comment
1. EMD Firms will be required to maintain excess working capital of at least $50,000 plus certain other capital requirements including the deductible on their insurance policy. 2. EMDs will be required to obtain insurance in the greater of: a. $50,000 per employee or $200,000, whichever is less; b. 1% of the client assets the dealer handles, holds or has access to, or $25,000,000 whichever is less; or c. 1% of the dealers total assets or $25,000,000, whichever is less. 3. EMDs must file its annual audited statements and working capital calculation with the regulator within 90 days of its fiscal year end and must file its quarterly financial statements and working capital calculation within 30 days after the end of each quarter.	None	(i) We congratulate the CSA members on amending NI 31-103 to a risk-based approach with respect to client's assets. We support the CSA members desire to provide security for clients where an EMD has access to a client's assets, for example where an EMD deposits a client's cheque in the EMDs' trust account. However, we do not support the CSA's approach to imposing the solvency and audited financial statement requirements on EMDs that merely provide transportation or custodial functions for a client when they deliver a client's cheque to an issuer pursuant to an offering. The inclusion of "handling" or "holding" a client's cheque, or the resulting security, as part of the CSA's risk-based approach effectively denies the practical reality of how securities transactions within the EMD industry are often conducted. For the majority of EMDs this will result in a loss of the intended exemption and will impose unwarranted severe business costs and administrative burdens on EMDs whose operations will not support this additional expense. (ii) There does not appear to be any correlation between solvency and financial statement requirements and the risk to the investor given the nature of an EMD's operation where an EMD does not have access to the client's assets in a trust account. (iii) We are concerned that the CSA members have failed to understand that, where an EMD does not have access to a client's assets in its trust account, this requirement serves no legitimate business function. An exemption should be provided to this requirement in situations where the EMD does not have access client assets or property held in a trust account. (iv) The LMDA submits that the risk-based model proposed by the CSA is the right approach to solvency and financial record keeping but that the exemption should be based on having access to a client's assets and not for performing mere transportation or custodial functions.

The LMDA would like to draw to the CSA's attention that the CSA has not identified any significant risks to issuers, investors or other market participants in capital markets serviced by the EMD industry. This provision of NI 31-103 as drafted over-regulates a non-existent situation for most EMDs. The LMDA believes this provision of NI 31-103 is incongruent with the stated propose of reducing regulatory burden and increasing regulatory efficiency. We believe that the exemption from this provision should be modified to address only the risks associated with having access to a client's assets in an EMD's trust account.

Denying EMDs the right to provide reasonable business services that do not place a client's assets at risk will impose significant operational cost on many EMDs whose business model neither warrant this imposition nor support the financial costs of such requirements. EMDs access a certain segment of the capital markets that are not adequately serviced by any other registration category. The imposition of the solvency and financial record keeping requirements will force many EMDs to exit the industry, with the

result that many issuers will be deprived of access to valuable sources of financing that other registrants in the industry do not provide or adequately service.

Conduct Rules

a) Loans, Credit or Margin

Requirement	Current Requirement	Comment
(i) A registrant must not lend, extend credit or provide margin to a client.	None	(i) We are concerned that normal settlement practices may be caught by this rule. It is common business practice in the financial industry for a registrant to close a transaction, receive the applicable securities and then deliver the securities to another registrant for "delivery against payment" (commonly referred to as a "DAP"). During this settlement process the lead dealer will have settled the transaction with the issuer and will then be seeking to settle the initiating subscription with the dealers that form part of the selling group. During this time period, the lead dealer will effectively be providing credit or a loan to the other selling group member until the transaction is settled. We suggest that the CSA members review this rule and provide the necessary guidance such that the settlement process described above is not impeded through the implementation of this rule. (ii) We note that the companion policy to NI 31-103 does not provide guidance with respect to section 5.7 and the specific CSA's concerns that section 5.7 is designed to address. We request that the CSA provide guidance in the companion policy with respect to the application of section 5.7. We submit that it is imperative that the normal settlement procedures described above are not inadvertently caught by section 5.7.

Re-Registration – Registered Firms and Individuals

Requirement	Current Requirement Ontario	Comment
(i) a person or company that is a registered firm and is a dealer in the exempt market on the date this NI 31-103 comes into force is required to register as an EMD 6 months after NI 31-103 comes into force (ii) an individual that is a registered individual and is a dealer in the exempt market on the date this NI 31-103 comes into force is required to register as an EMD 6 months after NI 31-103 comes into force	(i) Form 33-109F4. (ii) Form 3. (iii) Letter from compliance officer pursuant to s. 1.3 of OSC Rule 31-505. (iv) Certificate pursuant to OSC Rule 31-501. (v) Statement of Policies pursuant to s. 223 of Ontario Regulation 1015. (vi) Application for exemption from audit requirements pursuant to OSC Rule 31-503. (vii) Confirmation of reading of OSC Staff Notice 11-758.	(i) Given the information and detail required in Form 33-109F4 and the other requirements enumerated in column 2 applicable to dealers registered under the Limited Market Dealer category in Ontario, it is an unreasonable expense in time and money to require **registered firms and registered individuals** to re-register under NI 31-103. If the registration information on record at the applicable commissions is considered insufficient, the applicable commissions can address these deficiencies in the registrants' renewal application. Alternatively, if the CSA require that registered LMDs re-register under NI 31-103, then we submit that it would only be acceptable if all registered companies and dealers in all categories are subject to the same re-registration requirements. With respect, we submit that re-registration of already registered LMDs is a prohibitive waste of time and money for the LMD and the applicable commissions and defies rational understanding. (ii) We note that the only substantive difference between the OSC registration requirements for Investment Dealers ("IDs") and LMDs is membership in the Investment Dealers Association (the "IDA"). We submit that IDA membership, or the lack thereof, is not sufficient cause to require all LMDs in Ontario to incur the additional costs

		of submitting a new application for registration. Registration costs have already been incurred by the LMD once, and since there are no differences in the forms required for registration as an ID or an LMD in Ontario, this re-registration requirement in Ontario is unnecessary. (iii) The applicable securities regulators in Ontario and Newfoundland and Labrador already have the necessary information required pursuant to the existing registration process in effect and re-registration serves no useful purpose. As submitted above, if the applicable commissions require additional information from registered LMDs they can accomplish this by attaching a form to the LMD's renewal application and request this additional information at that time. Note, that the information requested should not entail a duplication of the registration forms already submitted as again, this would impose an administrative burden on a targeted section of the securities industry that would be unwarranted in the circumstances.

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The above comments are respectfully submitted by the Board of Directors of the Limited Market Dealers Association of Canada on behalf of its membership. While these submissions address what we consider the most egregious issues arising out of NI 31-103, some individual members of the LMDA have additional concerns. The concerns outlined in their individual comment letters reflect the diversity of the EMD industry and we encourage the CSA members to take that factor into consideration.

The Board of Directors of the Limited Market Dealers Association of Canada wishes to thank you for this opportunity to comment on NI 31-103. If you have any questions, please direct them to Brian Prill, Chairman of the Limited Market Dealers NI 31-103 Comment Committee (461) 362-5632, bprill@lmdacanada.com

Yours very truly,

Board of Directors
Limited Market Dealers Association
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