barometer

May 27, 2008

VIA EMAIL

British Columbia Securities Commission
Alberta Securities Commission
Saskatchewan Financial Services Commission
Manitoba Securities Commission
Ontario Securities Commission
Autorité 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 Anne-Marie Beaudoin
Corporate Secretary
Autorité des marchés financiers
Tour de la Bourse, 800, square Victoria
C.P. 246, 22 étage
Montreal, Québec
H4Z 1G3
Email: consultation-en-cours@lautorite.qc.ca

- and to -

John Stevenson
Secretary
Ontario Securities Commission
20 Queen Street West
19th Floor, Box 55
Toronto, Ontario
M5H 3S8
Email: jstevenson@osc.gov.on.ca

Dear Sirs / Mesdames:

Re: Proposed National Instrument 31-103 *Registration Requirements* (NI 31-103)

Barometer Capital Management Inc. (Barometer) is pleased to provide its comments on the second draft of the proposed NI 31-103.

Barometer is an independent, partner-owned firm that manages approximately $900 million dollars for families, endowments funds and trusts. We are registered as an

adviser in the categories of investment counsel and portfolio manager and as a limited market dealer in Ontario. We are also the manager and trustee of the Barometer Private Pools, a family of pooled funds that are sold by offering memorandum to qualified investors across Canada.

Our key overall comments on NI 31-103 are set out below.

Insurance and Solvency Requirement

The proposed instrument requires that an adviser that does not "handle, hold, or have access to client assets, including cheques and other similar instruments" must maintain bonding or insurance with a single limit loss of $50,000. In those cases where an adviser does "handle, hold or have access to client assets, including cheques and other similar instruments", the bonding or insurance requirement increases in a significant way from a minimum of $200,000 (or such lower amount as the board of directors deemed appropriate) up to a maximum of $25 million. This formula is based on a graduated scale of 1% of assets under management to a cap of $25 million. This requirement creates unfair treatment for advisers such as ours who will have to absorb a disproportionate share of the costs relative to their size. This change will not have any significant large money cost impact to advisers with assets under management far in excess of 2.5 billion, such as banks and large mutual fund companies.

We agree that there may be a concern with those firms that actually hold title to the assets of an investor, and that such insurance requirements may be appropriate in those circumstances. However, we do not feel that this should be the case if the adviser acts solely as an intermediary and merely delivers a cheque, on behalf of the client, to the custodian, that is made out to the custodian. Such a cheque is not a negotiable instrument, and we do not believe that a client's assets are put at risk if all the adviser is doing is delivering such a cheque to the custodian.

We believe that the insurance requirements for advisers as currently set out in proposed NI 31-103 present a significant barrier to entry for new market participants and constrain the ability of small advisers to compete effectively in the Canadian market place. The ultimate cost to the adviser can not be readily passed onto the investor as this would result in a disproportionate increase in fees relative to larger firms, which would make the smaller adviser less competitive. The Canadian asset management business is increasingly dominated by large investment managers and it is our opinion that the proposed instrument, in its current form, will further reinforce this and will ultimately limit the number of investment opportunities available to the Canadian investing public.

We would suggest that the Canadian Securities Administrators (the CSA) need to consult the insurance industry and consider the cost / benefit analysis of imposing these insurance requirements on advisers who merely handle cheques in the manner set out above. Based on our discussions with our insurance carrier, they have indicated to us that merely handling cheques made out to the custodian does not warrant the amount of insurance coverage required by the proposed NI 31-103. Our insurance carrier has also indicated to us that the coverage would result in a significant premium increase over the current requirements.

Financial Records and Quarterly Working Capital

We also have concerns with the proposal for advisers that will also be registered as exempt market dealers, who are handling cheques in the manner set out above, to file quarterly unaudited financial statements, including a quarterly report on working capital (i.e., Form 31-103F1). If the exempt market dealer only handles cheques in this manner, the exempt market dealer should be able to rely on the exemption in section 4.34 of proposed NI 31-103, subject to the caveat that no certified quarterly financial statements should be required in the case of an exempt market dealer that is also registered as an adviser, as the adviser is already required to file annual audited financial statements with the applicable members of the CSA. In such a situation, the audited financial statements of the registrant should satisfy any concerns the CSA have about such firm.

The additional costs associated with preparing such records will also have a significant impact on small-medium advisers that are also registered as an exempt market dealer, and may detract from their primary responsibility of managing client accounts appropriately. We do not believe that the additional filings in this instance provide any meaningful benefit to the CSA of monitoring the activities of such an adviser that is also registered as an exempt market dealer.

Record Keeping

The proposed NI 31-103 states that relationship records should be retained for at least seven years from the end of the relationship with the client. We would suggest that the CSA consider modifying this retention period to capture the last seven years of account activity and not account activity since the inception of the client account. Our concern is that for long term clients, we could foresee having to keep non-trade oriented instructions for an excessive period of time, well beyond what the client would expect or need. Similar to the requirement for a client's activity record, such relationship records should only have to be maintained for the last seven years.

Conclusion

We support the CSA's overall principle of increasing efficiencies in the registration regime across Canada. However, we are concerned that the overall impact to small-medium sized firms has not been given due consideration and if the instrument were to be implemented in its current form it would have a detrimental impact on small-medium sized firms and the investing public.

Thank you for the opportunity to provide our comments. We would be pleased to expand on the foregoing and respond to any questions at your convenience. Please feel free to contact the undersigned at 416 601 6888.

Yours very truly,

BAROMETER CAPITAL MANAGEMENT INC.
Roy Scaini, Chief Operating Officer