MARATHON
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British Columbia Securities Commission
Alberta Securities Commission
Saskatchewan Financials 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

John Stevenson
Secretary
Ontario Securities Commission
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Dear Sirs/Mesdames:

Marathon Asset Management LLP ("Marathon") appreciates the opportunity to comment on Proposed National Instrument 31-103 – *Registration Requirements* ("NI 31-103").

Marathon is an adviser, authorized by the Financial Services Authorities ("FSA"), in London, England to provide advice with respect to investing in securities. Marathon is currently registered as an international adviser or the equivalent in Ontario, Manitoba and Alberta. It is also registered as a limited market dealer ("LMD") in Ontario. It provides advice to clients who are "permitted clients" within the meaning of that term in OSC Rule 35-502 – *Non-Resident Advisers* ("Rule 35-502") pursuant to Rule 35-502 or the terms of its registration. Such advice is provided, directly, through an investment management agreement with the client or, indirectly, through a Canadian investment fund (the "Fund") of which State Street Trust Company Canada is the trustee and Marathon is the adviser. Those participating in the Fund are all permitted clients and the Fund is a permitted client under paragraph 15 of the definition of "permitted client" in Rule 35-502. Marathon currently distributes securities of the Fund as an LMD or pursuant to a dealer registration exemption only to permitted clients that are "accredited investors".

We understand that under the proposals in NI 31-103, Marathon, assuming it meets and continues to meet the definition of "international adviser", will not be required to be registered to advise "permitted clients" as long as its advice with respect to securities of Canadian issuers is only incidental to its advice with respect to securities of foreign issuers and the other terms of section 8.16 of NI 31-103 are met.

Comment – The definition of "permitted client" should be revised to include an investment fund, all of the investors in which are themselves "permitted clients" and it should be clarified, perhaps in Companion Policy 31- 103CP *Registration Requirements* (the "Policy"), that advising in respect of securities of a Canadian investment fund is not advice which would prevent an international adviser from relying on the international adviser exemption as long as advice provided to the investment fund with respect to securities of Canadian issuers is only incidental to advice with respect to securities of foreign issuers. We understand that this clarification is consistent with current interpretation of Rule 35-502. This is relevant to Marathon since it may acquire securities of such an investment fund pursuant to an investment management agreement under which it establishes a fully-managed account for a permitted client. It seems to Marathon that both of these comments are consistent with the policy represented by the international adviser exemption.

We also understand that under the proposals in NI 31-103 Marathon, assuming it meets and continues to meet the definition of international adviser and to qualify for the international adviser exemption, is not required, due to the exemption in section 2.2, to be registered as a dealer in order to buy or sell securities of a pooled fund administered by it for a fully-managed account it manages.

Comment – We understand that this exemption would only be required by an international adviser which, based on the business "trigger" to be introduced, would require registration as a dealer. Marathon may not, as a result, need to rely on this exemption. Nevertheless, we suggest the securities referred to should be securities of an "investment fund" (which Marathon understands is a defined term in securities legislation) and the relationship between the fund and the adviser should be that the adviser is the adviser or the investment fund manager (which Marathon understands are defined terms in securities legislation), not the "administrator" (which is not a defined term) of the fund.

In the event that Marathon can not rely on the international adviser exemption or wishes to register as an adviser in order to deal with clients who are not permitted clients, Marathon understands that its advising representatives must meet the proficiency requirements in NI 31-103.

Comment – The CFA and the Canadian Investment Manager designation are not generally held by portfolio managers in England. Marathon suggests that, in order to avoid the requirement for regular applications for exemption from the proficiency requirements in NI 31-103, the Canadian securities regulatory authorities consider including some "international" criteria that would satisfy the proficiency requirements. For instance, individuals that have are approved by the FSA to undertake "controlled functions" such as investment management activities for a firm that is authorized by the FSA, should be eligible to be registered as advising representatives. Similarly, the chief compliance officer of such a firm should be eligible to be registered as the chief compliance officer under NI 31-103. These comments are also relevant to the proficiency

requirements for registration of dealing representatives and chief compliance officers of exempt market dealers.

Notwithstanding the comments above, the inclusion of some grandfathering relief in relation to the proficiency requirements for existing registrants of international advisors and LMDs would seem to be a sensible addition. Where an individual has been registered for say 12 months or more and will merely be continuing in his/her current duties it would appear to be somewhat disproportionate to implement a proficiency requirement at this stage for these individuals. This would also be of relevance to existing individual registrants who are not subject to an authorisation or approval regime in their home country, and who could not therefore utilise any relief that was granted along the lines of that requested above for FSA controlled functions.

If you would like to discuss these comments further, please contact me.

Yours very truly,

Simon Davies

Chief Compliance Officer,
Marathon Asset Management LLP