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May 29, 2008

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Saskatchewan Securities Commission
The Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
Office of the Administrator, New Brunswick
Registrar of Securities, Prince Edward Island
Nova Scotia Securities Commission
Securities Commission of Newfoundland
Registrar of Securities, Northwest Territories
Registrar of Securities, Nunavut
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Attention: Office of the Secretary

Dear Sirs/Mesdames:

Re: Revised Draft National Instrument 31-103 "Registration Requirements"

Thank you for the opportunity to provide comments on the CSA's revised draft National Instrument 31-103 *Registration Requirements* (the "NRR") and the revised draft Companion Policy 31-103 *Registration Requirements* (the "Companion Policy"). This letter is submitted on behalf of a growing investment fund manager (the "Fund Manager") that recently established an

initial family of six prospectus qualified mutual funds. The Fund Manager has plans to grow its assets under management and offer other products and services in the future. Accordingly, it is important to the Fund Manager that the NRR include a registration regime that will add helpful protections for investors and the capital markets, but that does not create an overly burdensome regime that may ultimately result in increased costs for investors. This letter is being submitted on behalf of the Fund Manager to focus on several key issues that require consideration before a final registration rule is published.

1. The NRR and Provincial Securities Legislation

(a) Excess Regulatory Burdens, Inconsistency and Confusion

On April 24, 2008, the Government of Ontario published draft amendments to the *Securities Act (Ontario)* (the "OSA Amendments"), which set forth the implementation of the NRR in Ontario and moved a number of the provisions (with modifications) of the NRR into the *Act*, making such provisions in the NRR not applicable in Ontario. Conceivably, other provinces may take a similar approach to Ontario. The OSA Amendments contradict the stated objectives of the national registration rule to "harmonize, streamline and modernize the registration regime across the CSA jurisdictions."[1] While it is acknowledged that it may be necessary for local issues to be addressed in a province's own securities legislation, the approach taken by Ontario to redefine many of the registration categories and exemptions leads to confusion and excess costs for registrants, lack of uniformity for purposes of regulation and enforcement, and a discrediting of Canadian securities regulation. The Fund Manager respectfully submits that other provinces should not follow the approach taken by Ontario and that Ontario should scale back the OSA Amendments and avoid a fragmented approach to the national registration regime.

The differences between the NRR and the OSA Amendments are not insignificant. While the many variations in wording and the large portions of the NRR that do not apply in Ontario are confusing, there are also several sections of the OSA Amendments where material differences in registration requirements can be found, significantly undermining efforts to harmonize registration in Canada. For example, the definition of investment fund manager in the OSA Amendments applies to a person or company that directs the business, operations or affairs of an investment fund. In the NRR, an investment fund manager is one that is *permitted* to direct the business, operations or affairs of an investment fund, and does not need to actually do so. Also, the business trigger for registration, which applies to dealers and advisers, differs significantly between the NRR and the OSA Amendments. In the NRR, guidance as to the meaning of the business trigger is found not in the Rule, but in the Companion Policy. Moreover, the Companion Policy is descriptive, not prescriptive; the activities described on paragraphs (c), (d) and (e) of section 1.3 are not determinative for the business trigger. In the OSA Amendments, however, seven factors *must* be considered in determining if a person or company is engaged in a business when trading securities or providing advice. Depending on the facts, the OSA Amendments may lead to a completely different outcome in a determination of whether to register than the NRR.

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[1] (2007) 30 OSCB (Supp-2) at page 6.

A final example of the material differences between the NRR and the OSA Amendments can be found in the proposed sections 32(3) and (4) of the OSA Amendments. These sections of the OSA Amendments impose a fiduciary duty on all registrants. In addition, registered investment fund managers would also be subject to a duty of care. These duties are not new, and can be found in other pieces of securities legislation. However the decision to include the duties in the OSA Amendments when the duties are not found in the NRR is problematic. In order to preserve the integrity of a national registration rule, registrants across the country should be subject to the same registration and conduct requirements, regardless of home jurisdiction. Like the other discrepancies noted above, the Fund Manager recommends that the OSA Amendments be scaled back and that differences with the NRR be greatly reduced or eliminated. With respect, it is a proper role of the CSA to impose a fiduciary duty or duty of care for registrants under a national registration rule, not Ontario regulators.

(b) The Companion Policy and the OSA Amendments

A key concern, given the many carve-outs from the NRR proposed by securities regulators in Ontario, is the interplay between the NRR, the Companion Policy and the OSA Amendments. The Companion Policy provides significant information and clarifications on the registration categories, registration exemptions, conduct and proficiency requirements found in the NRR. Indeed, the OSA Amendments adopts certain sections of the Companion Policy, including the business trigger factors discussed above. However, this results in a disparity between the registration requirements in Ontario and the rest of Canada. It is problematic that portions of the Companion Policy, which provide non-binding guidance in every jurisdiction except Ontario, may constitute binding requirements in Ontario.

A related problem is that the Companion Policy contains substantive registration rules that should be set forth in the NRR (and, by extension, the OSA Amendments to the extent that the *Securities Act (Ontario)* replaces the NRR). For example, pursuant to the Companion Policy, investment fund managers are only required to register in the jurisdiction in which the investment fund manager is located, which in most cases will be where the manager's head office is located. However, if an investment fund manager directs the management of investment funds from locations in more than one jurisdiction, it must register in each of them. The Fund Manager recommends that the substantive provisions of the Companion Policy be moved into the NRR to the extent that such provisions appear in the OSA Amendments or are essential for purposes of understanding registration rules.

2. Registration Issues for Investment Fund Managers

(a) Need for Registration

It is not clear why the investment fund manager registration category is necessary as the Ontario Securities Commission and other CSA members currently have the legislative authority to regulate mutual fund managers as market participants. In addition, managers of prospectus qualified funds such as the Fund Manager are, in effect, subject to substantive regulation through the various national instruments that regulate the disclosure, investment activities, custodial arrangements and other aspects of the business and affairs of the investment funds they manage. The Fund Manager is concerned that the obligation to register as an investment fund manager will

create additional costs for the Fund Manager and ultimately for investors in its funds with no clear incremental benefit or protection for investors in return. If, however, the CSA disagrees with this position the Fund Manager respectfully submits that the requirements for investment fund managers should be reasonable and clearly articulated in the NRR so that investment fund managers do not have to spend significant time and fees for external advisors on interpreting and complying with the requirements of the NRR.

(b) Registration for Families of Funds and Limited Partnerships

In general, investment fund managers must be registered. This broad requirement, while straightforward for a single investment fund with one manager, is not sufficient to account for complex fund families or investment funds organized as limited partnerships. In the future, the Fund Manager may choose to establish subsidiaries to 'manage', or, in the case of limited partnerships, act as general partner for, a new fund. Where a fund is organized in such a way, the registration rules as currently set out would require such subsidiary or general partner to register as an investment fund manager. Some funds organized as limited partnerships may in fact have multiple general partners, each of which may be deemed an investment fund manager for purposes of registration. There is no policy rationale for requiring multiple registrations within the same fund family. Multiple registrations increase cost and regulatory burdens for funds with no increase in investor protection. Where fund managers have common ownership and common directors and officers, it may be appropriate to exempt each manager from being registered, provided one entity is registered. The Fund Manager recommends that where subsidiaries or general partners act in a capacity that could be deemed as acting as an investment fund manager, registration requirements should be changed to require only the main firm to register as investment fund manager.

(c) Dealer Registration Requirements if Carrying on Marketing and Wholesaling Activities

The Companion Policy states that an investment fund manager must also register as a dealer if it carries on marketing and wholesaling activities, such as advertising the fund to the general public, promoting the fund to registered dealers or distributing the fund to registered dealers which then sell securities of the fund to investors. However, the Companion Policy also states that an investment fund manager does not have to register as a dealer if its marketing and wholesaling activities are "incidental" to its activities as an investment fund manager. Pursuant to the Companion Policy, activities are incidental only if they relate only to the funds managed by the investment fund manager and the funds are distributed to investors through a dealer, not directly by the investment fund manager. While this discussion of the meaning of "incidental" provides some guidance, with respect, it does not suffice. While it is noted that securities regulators in Ontario have indicated that the description of "incidental" will be amended and clarified, it is important to stress that the Companion Policy should be explicitly clear on what constitutes wholesaling activities for an investment fund manager. The Fund Manager recommends that the CSA clarify the dealer exemption for investment fund managers who engage in wholesaling activities, and that such clarification appear in the NRR, not the Companion Policy. As noted above, substantive registration requirements and exemptions such as investment fund manager exemptions for wholesaling activities should appear in the NRR rather than the Companion Policy.

(d) Registration for Trust Companies and Third Party Fund Administration Service Providers

The broad requirement for investment fund managers to register under the NRR, as currently constituted, may also extend to entities that are not, in fact, performing fund management activities. Regulated trust companies that provide services as trustees of investment funds, third party fund administration service providers, and other entities may be required to register under the NRR. We understand that members of the CSA have made public comments to the effect that they do not intend the NRR to require such third party entities to be registered as investment fund managers. However, if an exemption from registration is to be available, we recommend that the exemption be stated clearly in the NRR, not the Companion Policy nor in public comments from regulators.

3. General Registration Issues

(a) The Companion Policy

We are concerned that the Companion Policy contains substantive registration rules that should be set forth in the NRR. For example, pursuant to the Companion Policy, investment fund managers are only required to register in the jurisdiction in which the investment fund manager is located, which in most cases will be where the manager's head office is located. However, if an investment fund manager directs the management of investment funds from locations in more than one jurisdiction, it must register in each of them. We recommend that the substantive provisions of the Companion Policy be moved into the NRR to the extent that such provisions are essential for purposes of understanding registration rules.

(b) Disclosure of Referral Arrangements

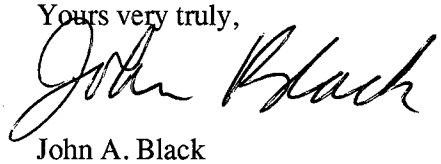
Division 2 of Part 6 restricts registrants from participating in referral arrangements unless (1) a written referral agreement exists between the registrant and the person or company making the referral and (2) clients are provided with written disclosure setting out the key terms of the referral arrangement. While this restriction may play a significant role in investor protection, its utility is diminished for referrals between affiliated entities. It is uncommon for affiliated entities to have written referral arrangements. Written arrangements between affiliates, as presently required by the NRR, will lead to increased costs for registrants without any meaningful additional protection for investors. We recommend that an exemption from Division 2 of Part 6 be created for registered firms and their affiliates. In addition, we note that the requirement of registrants to communicate to affected clients *any* change to the referral arrangement in section 6.13(2) is unnecessarily broad. We recommend that the requirement should be changed to provide that only *material* changes to the referral arrangement be communicated to affected clients.

Conclusion

We greatly appreciate your consideration of these submissions and would welcome the opportunity to discuss these matters further in the hopes of improving the utility of the NRR and ensuring that it serves the purposes of efficient, principles based regulation to the benefit of investors in the investment funds managed by the Fund Manager. Should you wish to engage in

such discussions, or if you have any questions regarding the comments provided herein, please feel free to contact John Black by telephone at 416.862.6586 or via email at jblack@osler.com. These submissions represent the views of the writer himself together with the views of the Fund Manager and not the collective views of Osler, Hoskin & Harcourt LLP.

Yours very truly,



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