May 29, 2008

Alberta Securities Commission
British Columbia Securities Commission
Manitoba Securities Commission
New Brunswick Securities Commission
Nova Scotia Securities Commission
Registrar of Securities, Northwest Territories
Registrar of Securities, Nunavut
Registrar of Securities, Yukon Territory
Saskatchewan Financial Services Commission
Securities Commission of Newfoundland and Labrador
Securities Office, Prince Edward Island

c/o Mr. John Stevenson, Secretary
Ontario Securities Commission
20 Queen Street West
Suite 1903, Box 55
Toronto, Ontario, M5H 3S8

And/et

Madame Anne-Marie Beaudoin
Directrice du secrétariat
Autorité des marchés financiers
800, square Victoria, 22e étage
C.P. 246, Tour de la Bourse
Montréal, Quebec H4Z 1G3

Subject: Proposed NI 31-103 - Registration Requirments

Mr. Stevenson and Madame Beaudoin:

The Canadian Advocacy Council of CFA Institute Canadian Societies (CAC)[1] is pleased to respond to the Request for Comments dated February 29, 2008 in which the Canadian Securities Administrators (CSA) invited interested parties to submit comments on the second draft of Proposed NI 31-103 – Registration Requirements (NI 31-103 or the Instrument).

[1] The CAC represents the 12 Canadian member societies of the CFA Institute constituting over 11,000 members who are active in Canada's capital markets. Members of the CAC consist of portfolio managers, investment analysts, corporate finance professionals, and other capital markets participants. The CAC's has been charged by Canada's CFA Institute member societies to review Canadian regulatory, legislative and standard setting activities.

General Comments

We would first like to commend the CSA for having made some significant and very helpful changes between the first and second drafts of the Instrument. We note, in particular, the changes that have been made in respect of the form of the relationship disclosure obligation, the exemptions that have been included with respect to disclosure regarding related and connected issuers and the clarification of the roles of the "ultimate designated person" and "Chief Compliance Officer", all issues on which we commented previously.

We are very concerned, however, about what we see as a serious reduction in the degree of harmonization among CSA members between the first and second drafts of the Instrument. Specifically, we are concerned about (a) Manitoba's decision not to utilize a business trigger for dealer registration, (b) the separate approaches taken by British Columbia and Manitoba with respect to the exempt market dealer category (the policy considerations of which we discuss in further detail, below), (c) the Ontario government's decision to implement changes to the *Securities Act* (Ontario) that would render a fairly significant number of sections of NI 31-103 inoperative in Ontario and (d) the slightly different approach taken by Alberta in respect of the responsibilities of the "ultimate designated person" and the chief compliance officer. Although the CAC remains generally supportive of the CSA's work, we believe these differences seriously weaken NI 31-103 as a "national" instrument and that they will erode many market participants' confidence that provincial governments and provincial securities regulators are serious about repairing Canada's badly fractured securities regulatory system. Accordingly, we would strongly urge those CSA members that have taken a different approach to these issues to reconsider them in the interest of achieving a truly national registration regime.

Apart from our concerns about the lack of harmonization, we also have the following substantive comments.

Exempt Market Dealer Issues

In our view, the question of whether dealers in the exempt market should be registered should be answered solely from the perspective of investor protection. In other words, do investors in the exempt market need the protection that would be afforded by EMD registration or do they not? While we acknowledge that there are compelling arguments both in favour of and against requiring registration, we do not accept that the solution is different rules in different parts of the country nor that the solution depends on whether the dealer is also carrying on business in another province or in another category of registration in the same province.

We are not convinced that the limited market dealer category in Ontario and Newfoundland and Labrador has added much in the way of investor

protection over the past 20 years and we are not aware that investor protection in the exempt market has suffered in the other provinces and territories. Furthermore, given the very limited proficiency requirements applicable to the proposed exempt market dealer category as well as the exemptions from the suitability, insurance and capital requirements that will be available in many circumstances, we do not believe that this category of registration will afford much additional investor protection. Accordingly, while we would support the position taken by British Columbia and Manitoba if it were applied to all dealers in the exempt market, the decision by both jurisdictions to *require* registration as an exempt market dealer if an entity is registered in that category in any other province or if it is carrying on business in another category of registration in the same province seriously undermines the intellectual and policy basis for their approach. We therefore believe that there is a much more compelling case for complete harmonization among all CSA jurisdictions.

Accordingly, we would strongly urge the British Columbia and Manitoba securities commissions to reconsider their current positions and to adopt the same approach to EMD registration as the other CSA members.

Compliance

We note that the CSA has significantly revised those sections of the Companion Policy describing registered firms' compliance obligations.

However, the discussion in the Companion Policy appears to be limited to describing firms' obligations under subsection 5.23(1)(a) of the Instrument but provides no guidance with respect to firms' obligations under subsection 5.23(1)(b). We assume that the subsection 5.23(1)(b) requirement that a firm adopt a system of controls and supervision sufficient to "manage the risks associated with its business in conformity with prudent business practices" is intended to create a legal obligation to establish written policies and procedures to address such things as financial risk, operational risk and reputational risk, however there is nothing in the Instrument or the Companion Policy that explains this.

Accordingly, we recommend that the Companion Policy be amended to provide firms with appropriate guidance regarding their obligations under subsection 5.23(1) of the Instrument.

Investment Fund Manager Registration

In our comment letter on the earlier draft of the Instrument we noted that although portfolio managers who operate pooled funds for use only by their own clients would be exempt from the dealer registration requirement, no similar exemption has been provided from the requirement to register as an investment fund manager.

In the summary of comments accompanying the second draft of the Instrument, you indicated that the Instrument has been amended to include

such an exemption, however it does not appear to us that this amendment has, in fact, been made.

We recommend that the Instrument be amended to provide for the appropriate exemption from investment fund manager registration.

Investment Fund Manager CCO Proficiency

We support the changes that have been made to section 4.15 of the Instrument to provide for a number of alternative educational proficiencies for investment fund manager CCOs.

However, we believe the work experience requirements applicable to investment fund manager CCOs are too onerous and should be made more consistent with the work experience requirements for portfolio manager CCOs. Specifically, we do not understand why an investment fund manager CCO's past work experience can only have been with an investment fund manager (i.e. not with a dealer or adviser) and the length of time required must be "consecutive" years. We believe that compliance *skills* (as opposed to substantive knowledge about the regulatory framework applicable to a particular registrant category) acquired through work experience at any registered firm ought to be transferrable to any other category of registered firm. In addition, with respect to the issue of consecutive years of experience, we note that the first draft of the Instrument included a consecutive years of experience requirement for portfolio manager CCOs, which has been removed from the current draft.

We recommend that the work experience requirements for investment fund manager CCOs be amended to match that of portfolio manager CCOs.

Principal Trading with Discretionary Managed Accounts

In our comment letter on the first draft of the Instrument, we noted that the CSA has in the past granted discretionary exemptive relief from section 118 under the *Securities Act* (Ontario) (and the equivalent provisions in other jurisdictions) to permit principal trading in fixed income securities between registered portfolio managers and the accounts (other than investment funds) that they manage on a discretionary basis. We noted in that earlier letter that section 6.2 of the Instrument provides no exemption that would replicate the exemptive relief previously granted and that, unless an exemption were provided, registered firms would need to reapply for the relief.

We would like to reiterate our concern and recommend, again, that the Instrument be amended to provide for this type of exemption.

"Cross-Trading" Between Managed Accounts

We note that section 6.2(2) has been amended such that paragraph (c) would now prohibit cross-trading between accounts managed by the same

adviser and that no exemption is included, even if disclosure is made to the client or consent obtained. We disagree with the addition of this new prohibition. In our view, the potential conflict of interest raised by cross-trading could be addressed through the adoption of policies and procedures under section 6.7(1) of the Instrument regarding fairness in the allocation of investment opportunities, written copies of which must be provided to clients under section 6.7(2). In appropriate circumstances, the ability to effect cross-trades between client accounts can be very beneficial to clients by reducing commissions and market impact costs; this is particularly the case when the securities being traded are illiquid or when a portfolio manager is rebalancing groups of accounts to achieve target over-weightings or under-weightings.

We strongly recommend that section 6.2 of the Instrument be amended accordingly.

Transitional Provisions

We do not understand the application of the proposed transitional provisions to the registration of exempt market dealers. We also do not understand the application of the proposed transitional provisions to UDPs and CCOs and, in particular, the relationship between these provisions and the proficiency and grandfathering provisions.

For example, section 10.1(2) of the Instrument indicates that registered "limited market dealers" in Ontario and Newfoundland and Labrador will be deemed to be registered as exempt market dealers when the Instrument comes into force. However, the Instrument then goes on to require both "registered firms" (s. 10.4(2)) and unregistered firms (s. 10.4(4)) who are dealers in the exempt market to register as EMDs within 6 months. We do not understand the distinction between subsections 10.4(2) and 10.4(4) of the Instrument and whether this means that currently registered limited market dealers will be expected to submit new applications in Ontario and Newfoundland and Labrador.

In addition, it appears to us that UDPs and CCOs (except investment fund manager CCOs) must apply for registration in those categories within one month of the Instrument coming into force, regardless of whether they are currently acting and registered in those capacities. It also appears that investment fund manager CCOs will have to apply for registration within 6 months and will have to satisfy all of the proficiency requirements, including the work-related requirements, discussed above, by the 1 year anniversary of the Instrument coming into force.

We strongly recommend that additional clarification regarding the operation of the transitional provisions be provided, either in the Companion Policy or in a CSA Staff Notice accompanying the publication of the Instrument in final form.

Summary

We thank you for the opportunity to provide the foregoing comments, we welcome any questions you may have and we appreciate the time you are taking to consider our point of view. Please feel welcome to contact us at chair@cfaadvocacy.ca.

Regards,

Blair Carey, CFA

Chair