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May 29, 2008

VIA E-MAIL

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
E-mail: 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
E-mail: jstevenson@osc.gov.on.ca

Dear Sirs/Mesdames:

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

With respect to the current draft of NI 31-103, which was issued by the Canadian Securities Administrators (the **CSA**) on February 29, 2008, we wish to applaud all of the hard work and effort that the CSA have done to date in moving this harmonization initiative forward, and in particular with respect to the numerous improvements that have been made to the current draft of the rule.

Comments

Our comments on this draft of NI 31-103 are set out below:

1. Harmonization

While we appreciate the efforts that have been undertaken by the CSA to date to harmonize Canada's registration regime for dealers, advisers and investment fund managers, we are seriously concerned about the lack of harmonization as a result of Manitoba not adopting the "business trigger", and Manitoba and British Columbia not requiring the registration of exempt market dealers (each an **EMD**) in their jurisdiction, provided such EMDs are not otherwise registered in any other category in such jurisdiction or registered in any category in any other Canadian jurisdiction. British Columbia and New Brunswick are also using a different approach to implement the "business trigger" in their jurisdictions compared to the other Canadian provinces and territories. For Canada's registration regime to work effectively and efficiently, it is imperative that the same rules apply across the country. To the extent possible, it would be extremely beneficial if Manitoba, British Columbia and New Brunswick would agree to implement NI 31-103 on the same basis as the other Canadian jurisdictions.

2. Handling Client Assets

We agree with the differentiation built into the current draft of NI 31-103 that imposes different standards on EMDs and advisers depending on whether or not they "handle, hold, or have access to any client assets, including cheques and other similar instruments", and appreciate the clarification included in section 4.7.1 of the companion policy to the current draft of NI 31-103. However, we strongly disagree with the

suggestion that merely handling a cheque of a client that is made payable to an arms length third party somehow puts the client at risk or raises sufficient concerns that the EMD or the adviser should not be able to rely on the advantages that are otherwise available if they do not handle, hold or have access to any client assets. We respectfully submit that handling a cheque in this manner should not cause the EMD or the adviser to be perceived as handling, holding or having access to a client's assets, and that the EMD or the adviser should be able to avail themselves of the benefits of not handling, holding or having access to a client's assets, provided they do not otherwise carry on any of the other enumerated activities.

3. Liability of Outsourced Functions

Although we appreciate why the CSA suggests in section 5.10 of the companion policy of the current draft of NI 31-103 that a registered firm that is outsourcing non-registerable, back office functions, should exercise prudent business practices in retaining the services of such parties, and should conduct appropriate due diligence of such parties, we are somewhat concerned with the suggestion in section 5.10 of the companion policy of the current draft of NI 31-103 that the registered firm is "fully liable and accountable" for all functions that they outsource. Provided the registered firm has acted appropriately and has not breached its standard of care and/or its fiduciary duties to its clients, the registered firm may not be legally liable to its clients. Not unlike a trust company which acts as the trustee of an investment fund, the trust company will be responsible for the care it uses in selecting the sub-custodians the investment fund uses, but the trust company will not be fully liable to the securityholders of the investment fund for the actions of the sub-custodian. Accordingly, while we appreciate the intent of section 5.10 of the companion policy of the current draft of NI 31-103, we respectfully submit that the statement that the registered firm is "fully liable and accountable" for the third party service providers that it hires on behalf of its clients is inappropriate and is imposing too broad a standard of liability that currently does not exist in the marketplace.

4. Record Retention

The record retention requirements in the current draft of NI 31-103 with respect to an "activity record" of a registered firm appear appropriate and in line with industry expectations. However, the need to keep a "relationship record" until seven years from the date the person or company ceases to be a client of the registered firm appears excessive and extremely problematic. For example, the definition of a "relationship record" as currently drafted will require a registered firm to keep all pertinent e-mails for

a client for as long as the client is a client of the registered firm. This could be an extremely long period of time depending on the length of the relationship. It is also not clear that all copies of all agreements between the registered firm and the client need to be retained for such a period, particularly if the agreement has been superseded with a new agreement between the parties. We respectfully submit that either a materiality threshold needs to be incorporated into what constitutes a "relationship record" of a registered firm or that the time periods that such documents need to be retained needs to be modified to better reflect commercial reality.

5. Investment Fund Managers – Requirements

The capital, insurance and proficiency requirements for an investment fund manager can be overly onerous, particularly for a new market participant. Similar to the distinction noted with EMDs and advisers that do not handle, hold or have access to any clients assets, we respectfully suggest that the CSA consider reducing the capital, insurance and proficiency requirements that would apply to an investment fund manager that satisfies these requirements.

6. Investment Fund Managers – Pooled Funds

As pooled funds can only be offered to qualified investors (e.g., accredited investors or investors investing at least $150,000 in a fund), that have sufficient sophistication to not need all of the protections of Canada's securities laws, query why it is necessary for the investment fund manager of a pooled fund to be registered in the same manner with the same requirements as the investment fund manager of a public fund. Given the sophistication of the investors such an investment fund manager is dealing with, we respectfully submit that the capital, insurance and proficiency requirements of such an investment fund manager do not need to be as high or as onerous as the requirements that apply to the investment fund manager of a public fund.

7. Investment Fund Complexes

Investment fund complexes with various fund families and various investment fund managers, including investment fund complexes that use special purpose investment funds that each have their own investment fund manager (e.g., each special purpose limited partnership has its own special purpose general partner), will have to satisfy the capital, insurance and proficiency requirements for each investment fund manager. Although an investment fund complex may be able to pragmatically deal with the

insurance and proficiency requirements of the current draft of NI 31-103, by increasing its insurance coverage and by using the same individuals in multiple investment fund managers, respectively, the investment fund complex will still be required to tie up a significant amount of capital in each investment fund manager that is part of the investment fund complex. In such a situation, we respectfully suggest that the CSA allow the investment fund managers in such an investment fund complex to either take on additional insurance to satisfy the regulatory concerns or to use a graduated capital requirement based on the amount of assets that are invested in the applicable funds.

As an aside, the CSA might also want to consider using a graduated capital requirement for all investment fund managers, where the capital requirement the investment fund manager has to satisfy depends on the amount of assets invested in the funds that it manages.

8. Complaint Handling

Similar to other provisions of the current draft of NI 31-103, which use a reasonability approach in dealing with a particular issue (e.g., identifying and responding to potential conflicts of interest), we respectfully submit that it may be prudent to revise the complaint handling provisions of the current draft of NI 31-103 to introduce a materiality threshold. A registered firm would still be required to respond to all complaints, but the need to involve the proposed dispute resolution service and to report the complaint to the applicable member(s) of the CSA would be subject to a materiality requirement and would only apply if such materiality requirement were surpassed (i.e., the claim exceeds a particular dollar threshold or involves a certain quantum of assets).

9. Pooled Fund Dealer Exemption

Section 2.2(1) of the current draft of NI 31-103 exempts an adviser from the dealer requirement if the adviser is selling securities of a pooled fund, that it has created and that it manages, to one or more of its fully managed accounts. However, this exemption is not available, pursuant to section 2.2(2) of the current draft of NI 31-103, if the fully managed account or the pooled fund is created or used primarily for the purpose of using the exemption in section 2.2(1) of the current draft of NI 31-103. Although the concern about setting up a fully managed account or using a fully managed account to take advantage of the exemption in section 2.2(1) of the current draft of NI 31-103 may have merit, we respectfully submit that this should not be the case with respect to the pooled fund. If the adviser is acting on behalf of a bona fide fully managed account, it is not

clear why it matters if the adviser decides to set up and use a pooled fund on behalf of its fully-managed accounts, provided the investment makes sense for such fully-managed accounts. Accordingly, we respectfully suggest that the reference to the pooled fund in section 2.2(2) of the current draft of NI 31-103 be deleted.

10. Exempt Market Dealers

Specifically, with respect to EMDs we would like to make the following suggestions:

(a) It should be clarified that an EMD that is able to rely on section 4.34 of the current draft of NI 31-103 (i.e., the EMD does not handle, hold or have access to any client assets), does not have to file certified financial statements on a quarterly basis with the applicable member(s) of the CSA if the EMD is also registered in some other capacity (i.e., as an adviser) and is already filing annual audited financial statements with the applicable member(s) of the CSA.

As an aside, if an investment fund manager also does not handle, hold or have access to any client assets, query why the investment fund manager needs to file its quarterly financial statements with the applicable member(s) of the CSA?

(b) Given that a dealing representative and the chief compliance officer of an EMD are each only required to complete the Canadian Securities Exam, pursuant to sections 4.09(a) and 4.10 of the current draft of NI 31-103, respectively, query why the chief compliance officer of the EMD should not be given the same alternative option as is available to a dealing representative under section 4.09(b) of the current draft of NI 31-103?

11. Affiliate

Various provisions in the current draft of NI 31-103 refer to an "affiliate" of the registered firm, particularly with respect to related and connected issuers (i.e., Part 6 of the current draft of NI 31-103), and we respectfully suggest that it needs to be clarified that either such references mean both a corporate entity, a trust and a limited partnership, or that a reference to an "associate" needs to be added, in addition to the reference to an "affiliate", to ensure that the relevant provisions of the current draft of NI 31-103 apply to all types of investment funds.

12. Excess Working Capital

With respect to the calculation of a registered firm's excess working capital pursuant to Form 31-103F1, in accordance with the requirements of section 4.18 of the current draft of NI 31-103, we have the following comments:

(a) Why should a registered firm have to add back 100% of the long term debt that is owed to a related party, as suggested by Line 5 of Form 33-103F1, if such related party debt is not due in the next 12 months?

(b) It is not clear why a registered firm should have to calculate the "market risk" of its assets, as required by Line 9 of Form 33-103F1, in accordance with the principles set out in Schedule 1 to Form 33-103F1, if the registered firm is preparing its financial statements in accordance with Canadian generally accepted accounting principles (**GAAP**)? This requirement imposes an additional monitoring burden on the registered firm that does not seem warranted, provided the registered firm's financial statements are prepared in accordance with Canadian GAAP; and

(c) It is not clear why a guarantee, which is a contingent liability, has to be included in a registered firm's excess working capital calculation, as required by Line 11 of Form 33-103F1, unless there is a strong likelihood that the guarantee will actually be called upon.

Queries

In addition to the foregoing, we also have the following queries:

(a) Historically the CSA has not been concerned about an intermediary being registered as an adviser or a dealer, provided the securities related activity was actually carried out by a registered adviser or dealer as appropriate (e.g., an unregistered intermediary like a financial planner that refers a client to an adviser). The current draft of NI 31-103 seems to suggest that when it takes effect, that NI 31-103 will require that such an intermediary become registered in the applicable registration category. It would be appreciated if the CSA would confirm that this inference is correct and if it is, the justification for such requirement; and

(b) As permitted clients are not subject to the suitability requirements of the current draft of NI 31-103 (see section 5.5(3) of the current draft of NI 31-103), query why a permitted client needs a copy of the registered firm's relationship disclosure information?

* * *

Thank you for giving us this opportunity to comment on this draft of NI 31-103.

Again we wish to applaud all of the hard work the CSA has done to date in moving the harmonization of Canada's registration requirements forward. Hopefully, Manitoba, British Columbia and New Brunswick will decide to adopt the same regime as the other Canadian jurisdictions.

If you have any questions with respect to our comments, please do not hesitate to contact either Garth Foster at 416 868 3422 or Pierre-Yves Châtillon at 514 397 5173.

Yours truly,

"Garth J. Foster" ***"Pierre-Yves Châtillon"***

Garth J. Foster Pierre-Yves Châtillon