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British Columbia Securities Commission
Alberta Securities Commission
Saskatchewan Financial Services Commission
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marches 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

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Secretary, Ontario Securities Commission
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Dear Sirs / Mesdames:

Re: Proposed National Instrument 31-103 and Companion Policy 31-103
– *Registration Requirements* (the "Instrument")

We are pleased with the Canadian Securities Administrators ("CSA") move towards a harmonized registration system throughout Canada and commend the regulators, and in particular, the CSA for its movement towards such a system. We believe that a clear and precise

registration system will result in increased investor protection and increased market participant compliance. With any change to a system, however, there are often questions and concerns. We have attempted to articulate our concerns over certain proposed changes to both the Instrument and the *Securities Act* (Ontario) (the "Act") in this letter.

We would like to emphasize our concurrence with and support for the comments and concerns raised in the comment letter submitted by the Canadian Bankers Association (the "CBA"). We will only duplicate CBA comments where they are of particular importance and will otherwise focus on business issues specific to TD Bank Financial Group.

General Comments

Despite the benefits of the registration reform initiative, the fact that it does not provide for "one stop shopping" is a major shortcoming of the Instrument. If harmonization is to be truly achieved with respect to the registration system in Canada, then we need an Instrument that will not only be applied nationally, but will also contain the substance of all regulations, exemptions and restrictions with respect to securities registration in the country. Since the proposed Instrument is indeed a national instrument, the first hurdle is overcome. It is our submission that to overcome the second hurdle, the proposed Instrument must contain not only the exemptions, guidelines, rules and regulations that are currently found in the Instrument, but also those exemptions, guidelines, rules and regulations found in various provincial securities legislation. The registration system in Canada is currently a myriad of regulations, rules, statutes and instruments and we submit that the current amendments being made to the Instrument would be a perfect opportunity to consolidate such documents and provide the securities market participants in Canada with one clear and concise instrument that would govern the registration system in Canada.

Definitions

Permitted Client

We commend the CSA for introducing this category of investor in response to previous industry comments. We believe it is appropriate to make a distinction between the regulatory protection required for those investors that are truly sophisticated by virtue of their size and experience or have sufficient resources to obtain expert advice and other investors. However, we do note that the definition of "permitted clients" currently does not include hedge funds and we respectfully submit that this inadvertent omission be corrected and hedge funds are included in the definition of permitted clients.

Business trigger

We note that the definition of "business trigger" in the Companion Policy has been changed to include both the business of *trading* or advising in securities. However, there is no clear definition of "trading in securities" which registrants can use as a guideline for registration. Although we acknowledge that the Companion Policy refers to the Québec definition of such a term, this does not provide a uniform definition for all jurisdictions. We submit that a definition that explains the term "trading in securities" would be helpful in harmonizing the registration system in Canada. As we discuss later in this submission, we also request that further

clarification is required as to the securities or instruments that are exempt from registration requirements (i.e., principal protected notes, guaranteed investment certificates, commercial paper, money market, etc.). Similarly, we request that additional guidance be provided with respect to how the "business trigger" would be applied to large entities such as financial institutions. Traditionally, banks have carried on many different trading activities through different operating divisions and it is not clear whether the "business trigger" would be applied at the activity level or at the entity level. In other words, would a single trade in a non-exempt security trigger a registration requirement for a firm that engages in the business of trading in exempt securities?

Registration Categories

General Comments with respect to Registration Categories

We acknowledge that consolidation of numerous categories can increase clarity and simplify the registration process, but are concerned with certain restrictions created by the proposed Instrument. For example, while the Investment Dealers Association of Canada ("IDA") will permit the Ultimate Designated Person of an IDA member firm to be a senior executive, the proposed Instrument restricts such title to that of the CEO or sole proprietor of a registrant firm. We respectfully request that the CSA reconsider this stipulation in light of the IDA's experience with this designation and provide a registrant with the flexibility to determine which of its senior executives is best qualified to be the Ultimate Designated Person. Furthermore, any change that results in a requirement that would be the same as existing Self Regulatory Organization ("SRO") rules will provide both clarity and continuity during the transition phase as the amended Instrument is introduced.

In addition, we are concerned that the deletion and/or consolidation of certain registration categories that support the current supervision regimes applicable to SRO member firms will lead to confusion, as well as administrative and compliance challenges in that the categories of registration will no longer align with SRO supervision requirements. It is critical that SRO member firms retain the ability to use the National Registration Database to track both registration categories under the Instrument and the branch manager or supervision structure required by the SRO. While the amendments to NI 33-109 are supportive of this result, we want to reiterate the importance of the CSA's continued commitment to providing National Registration Database support for SRO registration and request that a statement to that effect be added to the Companion Policy.

Associate Advising Representative

The addition of the requirement that an Advising Representative must pre-approve each of the transactions of an Associate Advising Representative is, in our view, much too restrictive and contrary to the operations of the Advisor firms. Currently, Advisor firms have policies and procedures, including guidelines under which trades can be executed, within which all Associate Advising Representatives must operate. Section 5.23 of the proposed Instrument requires a firm to maintain and apply a system of controls and supervision to comply with securities legislation and to manage the risks associated with the business. We agree with this principles based approach and find it inconsistent with the prescriptive requirement for pre-approval of advice from an Associate Advising Representative. With an appropriate system of internal controls,

pre-approval is unnecessary and may very well prejudice clients due to the delay in execution of certain transactions while pre-approval is sought.

SRO Membership

Harmonization of SRO rules with those found in the Instrument is of the utmost importance. Where existing SRO rules address provisions of the proposed Instrument that were not previously included in securities legislation, we submit that exemptions from those particular sections be created for SRO members. The effect of implementing re-created rules and guidelines that have functioned effectively in the past and that continue to fulfill their purpose becomes a cumbersome task for SRO members without the benefit of any improvement in process. Furthermore, we request that an exemption be granted from s.5.14 with respect to account supervision given that both the IDA and MFDA have existing Policies that govern risk based account selection review.

Fit and Proper Requirements

Proficiency

To the extent that the Instrument attempts to harmonize proficiency requirements, we support the provisions. Consistent standards are essential from an investor protection and market integrity perspective. Although we support certain proposed proficiency changes to the Instrument, we request that certain exemptions or grandfathering be created.

The Exempt Market Dealer proficiency requirement in the proposed Instrument for a Dealing Representative is the Canadian Securities Exam or Portfolio Manager requirements, whereas there are currently no proficiency requirements to be a Trading Officer of a Limited Market Dealer. Accordingly, we submit that an individual that is registered as a Trading Officer at the time the proposed Instrument comes into force should be granted an exemption from these proficiency requirements.

In addition, we suggest that the proficiency requirement for a Dealing Representative of an Exempt Market Dealer should include the PDO Exam as an alternative so that the requirements would be either: (i) the Canadian Securities Exam; (ii) the PDO Exam; or (iii) meets the requirements for registration as an Advising Representative.

We do not agree with the requirement that a Chief Compliance Officer ("CCO") of an Investment Fund Manager must have consecutive years experience whereas a Portfolio Manager's experience does not have to be consecutive. We respectfully submit that the word "consecutive" be omitted from s 4.15(a)(iii)(A) and (B) and s. 4.15(b)(iii)

Also of concern is the proposed requirement that a Chartered Financial Analyst ("CFA") registrant would be required to rewrite their designation examinations should they not work or be employed in the capacity as a CFA for 3 years. We submit that a Chartered Financial Analyst is a professional designation much like a lawyer and accordingly, should be carved out of the time limit requirement for examinations as it cannot be expected that a CFA candidate would rewrite his or her CFA examinations.

Financial Records

Section 4.30(1)(c) requires a description of any Net Asset Value ("NAV") adjustment made during a fiscal year. Although we applaud any changes that give further disclosure to investors, decisions with respect to disclosure must be made on both a purposeful and practical basis. Accordingly, we believe that adjustments made to a NAV of any investment funds should have a materiality threshold, as it cannot possibly be expected that every insignificant change to a large mutual fund be disclosed. Currently, IFIC Industry Practice rules provide a *de minimus* rule for NAV errors and we respectfully submit that the CSA consider such rules.

Conduct Rules

Relationship with Clients

We note that the proposed KYC provision which requires registrants to ascertain if the client is an insider of an issuer, states that "insider" has the same meaning ascribed to that term in the Act, except that "reporting issuer" should be read as "issuer" which expands the meaning to capture all issuers (reporting and non-reporting). Is it indeed the intention of the proposed Instrument that this requirement is to apply to all issuers in all jurisdictions, including foreign jurisdictions? In addition, it is not clear as to what a registrant is to do with this "non-reporting" insider information once it is obtained. We respectfully request that amendments be made to the Instrument that will provide further clarification, guidance and instruction in this area.

Finally, we would note that Bill C-25 requires that registrants ascertain the identity of individuals who have a minimum 25% beneficial ownership interest in an account. We question the need for a different and lower threshold in the proposed Instrument, particularly when the purpose for which the information is being collected is not clear, and respectfully submit in the interest of consistency and harmonization that an attempt be made to provide a consistent experience for clients of all financial services providers, whether securities registrants or not. Accordingly, we believe that the threshold in the proposed Instrument should mirror that found in Bill C-25.

Relationship Disclosure

It is very important that these requirements be aligned as between SRO and non-SRO firms. In order to achieve consistency, we urge the CSA to work with the SROs in creating common principles based disclosure guidelines, as described in the proposed National Instrument that will work effectively for all registrants. One of the fundamental differences between the IDA Proposed Rules and the relationship disclosure information provisions in the Instrument is that the Instrument no longer requires a relationship disclosure document. Instead, it provides a basic list of items which must be disclosed to clients. This requirement allows non-IDA firms some flexibility in how they comply, such as permitting firms to satisfy the requirement using existing documents rather than the prescriptive approach in the IDA Proposed Rules, which specifically requires a document, entitled "Relationship Disclosure". Investors should be entitled to receive similar information with similar presentation guidelines regardless of which regulator has jurisdiction over the firm presenting the information.

Lending

The proposed Instrument prohibits a registrant from lending to its clients. The term "registrant" is not defined in the Instrument. Is this provision intended to apply to a registered firm, a registered individual or to both?

Comments from the last draft of the Instrument indicate that exemptive relief from the lending prohibition may be obtained on a case-by-case basis. We submit that the Instrument should be amended so as to set out the conditions under which lending may be facilitated. For example, it is common practice that clients request lending and wish to collateralize portfolios by pledging accounts as security against a credit facility. A registration system based on case-by-case applications for exemptive relief in this area would be both burdensome and impractical for registrants, clients and the CSA.

Client Assets

The proposed Instrument stipulates that each account is to be supervised separately and distinctly from the accounts of other clients. We request further clarification as to the meaning of "supervised". For example, a client with both a personal account and a corporate account often requests that the accounts be managed in tandem. Accordingly, to fulfill the client's request, it is common to create one Investment Policy Statement to cover both account strategies. We request further clarification be given either in the Instrument or its Companion Policy as to whether this practice is prohibited under the Instrument.

In addition, section 5.10(2) of the proposed Instrument states that the cash of a client must be held in a designated trust account with a Canadian financial institution or a Schedule III bank. Although in principal we do not disagree with this restriction, we believe it fails to consider the circumstances in which certain investment funds utilize strategies that require cash balances to be maintained with other than Canadian institutions or other Schedule III banks in accordance with normal market practices. We respectfully submit that such practices should be exempted from the requirement that all cash must be held in a Canadian financial institution or Schedule III Bank provided that such cash is held separate and apart from the property of the registrant firm.

Record keeping

The requirement to maintain an effective record keeping system rather than a requirement for prescriptive lists is an appropriate application of principles based regulation. However, we are concerned with the retention requirements for both "activity" and "relationship" records. Given the room for significant overlap between the two categories, and the difficulties in categorizing and storing such communications on this basis, the administrative and cost burden will be significant. We question whether registrants will be able to create a useable archive and retrieval system for all electronic communications, taking into account the enormous volume of information that is required to be archived. The practical result of the implementation of the rule as drafted could well be the perpetual retention of all electronic communication records in the firm at great cost. This result is simply not tenable.

In addition, we believe that the proposed requirement that records be kept of all oral communication is much too onerous and is not practical given the nature of our retail business. For example, many divisions within our business, and those in our financial institution counterparts, do not "record" or "tape" conversations. While taping is not mandated by the rule, the fact that a record is required would mean that the failure of a registrant to maintain summary written notes of each client interaction would result in a regulatory violation. Furthermore, for those business divisions that do tape conversations, the time period for retention is much too onerous based on storage capacity limitations and the cost in doing so. Accordingly, we propose a dialogue between market participants and the CSA to focus on the specific type of records of concern and the creation of a reasonable time frame in respect of record retention.

Reporting Trades

The proposed Instrument extends the current scope of disclosure by stipulating that a report of a trade sent to a client must state if the security traded was that of a connected issuer of the registrant. It is our assertion that disclosure of all connected issuers is not possible for a number of reasons. Information and other ethical barriers erected within large organizations are designed to prevent the type of information sharing that is necessary in order to effectively comply with this requirement. In addition, the language used by issuers in some offering documentation indicates only that an institution or registrant "may" be connected to the issuer. In the absence of information in the disclosure language used by issuers or lack of knowledge of other relationships within the larger organization, it is not possible for registrants within large and complex financial institutions to comply fully with this requirement. This is a particular problem for registrants not currently subject to requirements to disclose connected issuers on reports to clients. Accordingly, we request that the CSA reconsider the proposed requirement to disclose connected issuers based on the impractical nature of compliance by large financial institutions.

In addition, the proposed Instrument exempts a registrant from this disclosure requirement in its reporting document if the security in question was that of a mutual fund that had a similar name to the registrant firm. We applaud the CSA in this practical and common sense approach, but submit that the exemption should be expanded to include securities of any issuer that has a name so similar that it is apparent that the two are affiliated.

Confirmation for Certain Automatic Plans

Section 20(a) of the proposed Instrument exempts a registrant from the requirement to send a confirmation of trade if a trade is made under an automatic plan at least monthly. We agree with such an exemption, however, would submit that the requirement to rely on this exemption that the client give "prior written notice" be amended to read "prior notice" in that it is common practice that clients place their buy and sell trades for securities either via telephone or via an electronic brokerage service. Written instructions from clients are no longer common practice, are not desired by clients and are discouraged due to the delays in the receipt and entry of orders. Thus, the requirement to receive written notice from a client in order for a registrant to rely on this exemption is burdensome on the registrant and provides no further protection to the investor.

In addition, under our current practice, a client will receive a trade confirmation for the initial transaction and all subsequent transactions will be recorded on a client's monthly or quarterly statement. We request clarification and further guidance as to whether a client's monthly or

quarterly statements noting all transactions during that time period are sufficient to meet the requirements under the Instrument with respect to automatic plans.

Compliance

The proposed Instrument requires that a CCO provide an annual report to the board of directors of its firm. We submit that this provision should provide more flexibility to account for more frequent reporting to a board of directors, if desired. For example, if a CCO reports to a board of directors on a quarterly basis, then it should not be required that an additional annual report be created and submitted to a board of directors as this only creates more work and duplicates information already presented to a board of directors. A change to the wording in the Instrument so that the intention is that a CCO must "report, at least annually, to the board of directors" would allow market participants flexibility within their firms with respect to frequency of reporting and board meetings without the risk of added administrative and duplication of information.

Complaint Handling

Although we support the attempt to standardize the policies and procedures which registered firms must have to address client complaints, we note that the proposed requirements in the Instrument are different from what exists under the SRO complaint handling procedures (i.e., IDA and MFDA) and that process found in securities legislation in Québec. Further, we question why registered firms in Québec are exempt from s.5.28 of the Instrument, whereas firms governed by an SRO are not. If the complaint process contained in securities legislation in Québec is sufficient for Québec investors, then why is this process not adopted within the Instrument? Accordingly, we request that this section be harmonized across jurisdictions within Canada and should this not be possible, then we believe that it would be much more efficient to have the SROs provide all reports to the CSA.

It is also critically important that a threshold of materiality be established within the definition of complaint to ensure that immaterial and inconsequential matters need not be recorded or reported.

In addition, the Instrument as currently written does not clearly identify the "securities regulatory authority" to which registrants are required to report. The Instrument proposes to require a registrant to report complaints semi-annually to "the securities regulatory authority". Are all complaints received by a firm to be reported to all provincial and territorial securities regulators? Are complaints to be sorted so a securities regulatory authority only receives reports of complaints from residents within its jurisdiction? On the same note, guidance would be helpful as to the level of detail that is to be included in any complaint report and what is to be considered a complaint.

Non-resident registrants

The Instrument proposes to require disclosure of certain information to clients of a firm with a head office located outside the local jurisdiction. There is no exception provided for a firm that has its head office in another Canadian jurisdiction but is registered and maintains an office within the local jurisdiction. We submit that the wording of the Instrument be amended to state

that such disclosure is required in the event the head office is located in another jurisdiction and such firm *does not* maintain an office in the province of residence of the client.

Conflicts of Interest

General

The requirement that a registrant base its conflict of interest disclosures on clients' expectations of what must be disclosed is subjective and variable and puts registrant firms in an indefensible position for any decision made, however reasonably, not to disclose an conflict. A more consistent and clear standard, using materiality should be included in the Instrument. We submit that the standard used in National Instrument 81-107 would be a useful approach to be followed.

We note s.6.1 (4) exempts investment funds subject to NI 81-107 from this section for an investment fund manager. As this section pertains to the Adviser managing the funds, we suggest that the wording include Adviser to clarify that this section does not apply to the investment fund manager or adviser in respect to investment funds subject to NI 81-107.

More specifically, s.6.2(2)(c) of the Instrument captures crossing between managed client portfolios which has previously been permitted. It is our belief that with appropriate disclosure and/or informed consent being granted by the client, this practice of moving securities at a lower cost which benefits the client is not contrary to a client's interest and does not warrant prohibition under the Instrument. Furthermore, in practice, advisors send orders to brokers-dealers and do not specifically direct crosses, however, crosses may occur unknowingly as part of the market matching process. This action would be inadvertent and unintentional and we are concerned that compliance in this area may become an issue. We submit that consideration should be given to retaining the original wording in s. 118(2) for s. 6.2(2) (i.e. "The portfolio manager shall not knowingly cause any investment portfolio managed by it to") or the Instrument should allow an exemption for this practice provided informed written consent is given by a client.

Referral arrangements

It is our submission that the types of activities that are intended to be covered under this section should be more clearly defined. Consistent with our comments on conflicts, we believe that the parameters of disclosure should be well defined and not be based on the subjective views of the client. In particular, items 6.13 (1)(c) and (g) are too open ended to provide certainty as to the limits of disclosure and s. 6.13(e) is overly burdensome (i.e., a list of activities in which the registrant is not permitted to engage). Further, requiring the repapering of existing referral arrangements will not only be quite onerous on the firms, but will be confusing and of little or no value to the respective clients.

In addition, we submit there are a few instances in which an exemption to this section is warranted. Referrals among entities of the same corporate family should be granted an exemption as they are often part of the array of services that clients expect to obtain from a large financial services group.

Remuneration

We request further guidance be added to s.6.4.3. of the Companion Policy in order to provide firms with an understanding as to which types of remuneration practices are considered inconsistent to its obligation to clients. Both fee based remuneration and commission based package examples would be extremely helpful to market participants.

Exemptions

Safe Securities

We have noted earlier our strong support for a single national instrument containing all registration requirements and exemptions. In reviewing the proposed Instrument, we assumed that the definitions of "securities" in securities legislation would not change. However, without seeing the legislative amendments proposed for each jurisdiction, it is difficult to determine with certainty the status of principal protected notes or market linked GICs as securities under the act and the need to register, and in which category, in order to trade in them.

The effect of the Exempt Market Dealer registration category cannot be fully or effectively assessed based on the current proposed wording in the Instrument. It is unclear in the Instrument as to whether an Exempt Market Dealer registration is required for federally regulated financial institutions selling certain federally regulated financial instruments such as PPNs or other instruments such as GICs, commercial paper or money market instruments. Due to the omission of many "safe securities" from the exemption list in the Instrument, registrants must continue to search for and rely on various Rules and Regulations and arrangements between the provincial and federal governments with respect to jurisdiction over securities. For example, firms that are regulated by OSFI may, in Ontario, rely on exemptions found in the Hockin-Kwinter accord. However, in other jurisdictions in Canada there is no such equivalent to the Hockin-Kwinter accord on which financial institutions may rely for the sale of "safe securities". Accordingly, we submit that it would be most effective and helpful if registration exemptions could be found in one instrument and we believe NI 31-103 is the best place for such insertion. As stated earlier, we view this current overhaul of the registration regime as the perfect opportunity to consolidate, standardize and harmonize registration requirements and exemptions at a national level.

Mobility exemption

We are disappointed with the decision to retain the limits on the broker mobility exemption. We submit the limits are inconsistent with the purpose of a national registration system and so restrictive to be of no use to firms or individuals. The cost and time required for firms to develop and monitor compliance with the proposed exemption more than offset the benefits. It is not clear what regulatory purpose is served by the retention of such limits and the protection that may be provided to investors.

Transition

There are a number of sections within the transition portion of the Instrument that add confusion with respect to international dealers. In Newfoundland and Labrador, s.10.1(2) deems an international dealer to be an exempt market dealer and therefore, must register as such pursuant to s.10.4. However, this direction is inconsistent with both s. 8.15 of the Instrument and our understanding that activities previously captured under the current IDL category would be granted an exemption from the dealer registration requirement under the proposed Instrument. We respectfully request that further guidance and clarification be given with respect to these sections so that firms can properly assess requirements during and after the transition phase.

Finally, due to the complexity and extensive impact of this Instrument, we request another public comment period with respect to further revisions.

Ontario Legislative Amendments

We are extremely concerned that many of the proposed provisions in the Instrument are to be enshrined in legislation rather than in the Instrument. This inclusion of provisions in legislation rather that the Instrument severely limits the ability to modify and update the Instrument in a timely and coordinated manner in response to emerging issues and market developments. We believe that this implementation strategy is inconsistent with the objective of regulatory harmonization and will further contribute to the patchwork nature of Canadian regulation that has been so soundly criticized within Canada and on an international level. We fail to see any public interest concern that is served by this strategy; and for these reasons we strongly urge the CSA to consider consolidating registration regulation in a national instrument, NI 31-103.

We consider the consistency in language between the Instrument and any supporting statutory amendments to be vitally important to the creation of a national standard. It would seem to us that the Instrument should be finalized before the language of any supporting statutory changes is finalized. All provincial and territorial statutes should, to the extent possible, leverage the language of the Instrument to ensure effective harmonization and interpretation nationally.

Conclusion

We thank you for taking our comments into consideration. If you have any questions relating to this submission, please do not hesitate to contact me.

Yours truly,

"William Gazzard"

William Gazzard
Senior Vice-President and Chief Compliance Officer
TD Bank Financial Group