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May 29, 2008

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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" - Comments Submitted by Osler, Hoskin & Harcourt LLP

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"). We are encouraged by many of the changes that have been made to the NRR as initially proposed in 2007. However we are submitting this comment letter to focus on several key issues that we believe require additional consideration before a final 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") (such amendments, the "OSA Amendments"), which set forth the implementation of the NRR in Ontario and moved a number of the provisions of the NRR (with certain drafting modifications) into the OSA, making such provisions in the NRR not applicable in Ontario. Conceivably, other provinces may take a similar approach to Ontario. This approach frustrates the stated objectives of the national registration rule to "harmonize, streamline and modernize the registration regime across the CSA jurisdictions."[1] While we acknowledge that it may be necessary for certain local issues to be addressed in a province's own securities legislation, the approach taken by Ontario to move most of the substance of the NRR into the OSA leads to confusion and excess costs for registrants, lack of uniformity for purposes of regulation and enforcement, and a step backwards in the efforts to enhance Canadian securities regulation. We respectfully submit that other provinces should not follow the approach taken by Ontario and that Ontario should remove the particular OSA Amendments that would otherwise be contained in the NRR and avoid a fragmented approach to the national registration regulation.

The differences between the provisions of the NRR and the OSA Amendments that are intended to replace them are not insignificant. 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 described as someone that is *permitted* to direct the business, operations or affairs of an investment fund, and does not need to actually do so. With respect to the definitions of international dealer as between the NRR and OSA Amendments, the OSA Amendments require the dealer to be registered *and to act* as a dealer in its home jurisdiction, whereas the definition in the NRR only requires that the dealer be registered in its home jurisdiction. Also, and perhaps most significantly, the description of 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 NRR, but in the Companion Policy. Moreover, the Companion Policy is descriptive, not prescriptive; stating that the activities described on paragraphs (c), (d) and (e) of section 1.3 of the Companion Policy 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 than the NRR in an analysis of whether registration is required for certain activity.

A final example of the potential problems associated with material provisions relating to registration being in the OSA Amendments rather than the NRR can be found in proposed subsections 32(3) and (4) of the OSA Amendments. These subsections of the OSA Amendments impose a fiduciary duty on all registrants to act honestly, fairly and in the best interests of clients. In addition, registered investment fund managers would also be subject to a specific statutory duty of care under the OSA amendments. These duties are not new, and can be found in other pieces of current Ontario securities legislation. However the decision to include the duties in the OSA rather than the NRR raises the concern that such duties may not be uniformly established

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

across CSA jurisdictions. 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, we recommend that the OSA Amendments be scaled back as much as possible and that differences with the NRR be eliminated.

(b) The Companion Policy and the OSA Amendments

A key concern, given the proposed removal of so many provisions from the NRR into the OSA Amendments, 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, exemptions, conduct and proficiency requirements and other compliance requirements found in the NRR. In fact, in certain instances the Companion Policy contains a number of highly substantive provisions explaining and conditioning the requirements of the NRR, which provisions should, in our view, be set forth in the NRR rather than the Companion Policy given their substantive nature. Indeed, the OSA Amendments adopt certain sections of the Companion Policy as statute, including the business trigger factors discussed above. In other instances, provisions of the Companion Policy are not dealt with in the OSA Amendments. The result is that the requirements of the NRR that those Companion Policy provisions relate to have, for purposes of Ontario, been removed from the NRR and replaced by provisions in the OSA Amendments. For example, pursuant to section 2.8 of 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 Companion Policy also provides that, if an investment fund manager is located outside Canada, there is no requirement for it to be registered in Canada, unless the manager is "directing the management of an investment fund from inside Canada". This section of the Companion Policy is identified therein as providing guidance relating to section 2.6 of the NRR, which the proposed approach to the OSA Amendments would remove for purposes of Ontario. In contrast, the OSA Amendments impose a requirement to register as an investment fund manager without any discussion of these jurisdictional issues.

This approach results in a significant disparity between the process for (and possibly the results of) interpreting registration requirements in Ontario and the rest of Canada. Therefore, we recommend that the substantive provisions of the Companion Policy be moved into the NRR wherever possible and that the OSA Amendments leave such substance in the NRR.

2. Registration Issues for Investment Fund Managers

(a) Registration for Groups of Funds and Funds Formed as 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. It is not uncommon for a firm to establish a separate subsidiary to 'manage', or, in the case of limited partnerships, act as general partner for, a fund. Where a fund and its manager are structured in such a way, the registration rules as currently set out would arguably require both the parent firm and each subsidiary or general partner to register as an investment fund manager. Some fund groups with multiple funds organized as limited partnerships may in fact have multiple general partners, each of which may be considered to function as an investment fund manager for purposes of registration. Also, some fund complexes have established more than one fund manager to manage a series of funds. There is no policy rationale for requiring multiple registrations within the same fund family where all of the entities are wholly owned by a single firm. 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 would be appropriate to exempt each affiliated manager from being registered, provided one parent or controlling entity is registered. We recommend that where subsidiaries, (including subsidiary general partners of limited partnerships) act in a capacity that could be viewed as acting as an investment fund manager, registration requirements be changed to require only the parent-level firm to register as investment fund manager.

(b) 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, it is generally confusing and not sufficient. We note that securities regulators in Ontario have indicated that the description of "incidental" will be amended and clarified. However, it is important to stress that the Companion Policy should be explicitly clear on what constitutes wholesaling activities for an investment fund manager. We recommend 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 given its substantive nature.

(c) 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 considered investment fund managers under the broad meaning ascribed to this term and, therefore, 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 it be stated clearly in the NRR, not the Companion Policy nor in public comments from regulators. Further, in some circumstances, a fund may have no investment fund manager other than its trustee. If the trustee fulfills the role of the investment fund manager and is a Canadian financial institution (such as a regulated trust company), it should not be subjected to registration.

3. Registration Issues for Dealers and Advisers

(a) Extension of Margin/Credit by Exempt Market Dealers and Advisers

Under Section 5.7 the NRR as it is currently proposed, any registrant that is not a member of the Investment Dealers Association of Canada (the "IDA") will be prohibited from providing margin or otherwise extending credit to a client. This is of particular concern to foreign full service broker-dealers that may seek to register in the category of exempt market dealer ("EMD"). Under current Canadian securities registration requirements, broker-dealers registered as limited market dealers in Ontario and relying on the accredited investor exemption in other provinces are able to provide a full range of services to accredited investors (including extending margin) without significant impediment. The transitioning provisions in Part 10 of the NRR will automatically deem a firm registered as a limited market dealer to become an EMD and the ability to extend margin to clients will immediately cease at the time of being deemed an EMD. Although a sound policy basis may exist for prohibiting margin activities for smaller EMDs that would otherwise not have robust capital requirements and margin maintenance infrastructure, this result is untenable for foreign full service and other firms whose business requires the use of margin and other forms of transaction financing and which are subject to capital adequacy requirements and have appropriate compliance systems for these purposes. It should be noted that while the restriction on extending margin does not apply to IDA-member firms, non-Canadian firms are not eligible for membership with the IDA. Accordingly, we respectfully recommend that an exemption from the restriction on providing margin and extending credit should be built directly into Section 5.7 of the NRR, setting out the specific criteria that must be satisfied to rely on the exemption. It is further submitted that membership in an SRO that regulates the extension of margin to customers should be sufficient to allow an EMD to do so. As a matter of consistency, we further note that section 5.3(1)(d) of the NRR (when read in conjunction with section 5.3(6)), actually contemplates an EMD financing its clients' acquisition of securities.

(b) Permitted Clients for the International Dealer and International Adviser Exemptions

Osler supports the CSA's efforts to revise the list of permitted clients for purposes of the international dealer and international adviser exemptions from that which was contained in the initial draft of the NRR. However, as a general observation, because the definition appears to be largely derived from and, according to discussions with CSA staff, was intended to reflect the list of clients that a non-resident adviser is currently permitted to advise under OSC Rule 35-502, the list requires some further adjustment to make it equally useful for dealers. For example, the list as drafted would appear to exclude business organizations, other than *corporations* with significant net assets (including limited partnerships and trusts). Given the significant number of well-capitalized Canadian businesses that are not organized as corporations (and that do not meet any of the other categories of "permitted clients"), and given the lack of any obvious investor protection rationale to exclude them, we recommend that paragraph (o) of the definition be revised to include a "person or company, excluding individuals" with net assets greater than a specified threshold (with the term "person" being defined within the various securities acts).

Furthermore, paragraphs (m) and (n) of the definition of "permitted client" raise difficulties in the context of family trusts, family holding companies or other estate vehicles where children or other dependants who are beneficiaries (or shareholders) may, in many instances, not be considered to own net assets exceeding $5,000,000. Although under paragraph (m) of the definition, individuals with $5,000,000 in net assets are permitted clients, where such assets are held in the form of a family trust or family holding company and one or more of the beneficiaries or shareholders (as applicable) does not have $5,000,000 in net assets at that time, the vehicle would not be a permitted client unless it met the significantly higher threshold for business organizations in paragraph (o). There would not appear to be any investor protection rationale for precluding the use of the international dealer or international adviser exemptions for a family trust or family holding company with significant net assets just because one of the beneficiaries or shareholders happens not to meet the $5,000,000 threshold at that time, particularly when the exemptions would otherwise be available for the same assets if they are held by the head of the family individually (or in a holding company for that individual). It is respectfully submitted that the language in paragraphs (m) and (n), as well as the net asset threshold in paragraph (o) should be reconsidered and revised so as to ensure that the international dealer and international adviser exemptions do not preclude wealthy Canadian individuals and their family investment entities as well as well-capitalized business organizations of varying forms from accessing the services of international dealers and advisers.

With respect to categories of investment funds within the definition of "permitted client" in the NRR, we note there are also some significant differences from current OSC Rule 35-502. For instance, the definition of "permitted client" does not include an investment fund that distributes its securities only to other permitted clients as is currently permitted for registered international advisers under OSC Rule 35-502. We recommend that the definition of "permitted client" be amended to include such an investment fund.

Unlike many paragraphs in the definition of "permitted client" that appear to have their origins in the same definition in OSC Rule 35-502, paragraph (l) within the definition of "permitted client" dealing with registered charities appears to have been taken from the definition of "accredited investor" in National Instrument 45-106, *Prospectus and Registration Exemptions*, and is, accordingly, tailored for dealers rather than advisers. The language of this paragraph (l) requires the charity to have an "eligibility advisor" or a local registered adviser that provides the charity advice in respect of the securities to be traded. When read in the context of an international adviser considering whether a Canadian registered charity is a "permitted client" for purposes of portfolio management activity, this language is problematic and clearly inappropriate. We recommend that in order to be useful for both dealing and advising contexts, paragraph (l) of the definition of "permitted client" be replaced with *"a registered charity under the Income Tax Act (Canada) with assets not used directly in charitable activities or administration of at least $5 million or its equivalent in another currency"*.

(c) <u>Restrictions on Dealing with Canadian Securities for the International Dealer and International Adviser Exemptions</u>

As drafted, the international dealer exemption provides no scope for dealing in securities of Canadian domiciled issuers, including those that are interlisted on Canadian and US or international exchanges, or even those that are listed *exclusively* on exchanges or marketplaces outside of Canada. For instance, in the case of Canadian issuer securities listed exclusively in the U.S., Canadian investors cannot access such securities except, at some level, through a U.S. broker-dealer. There are a significant number of Canadian domiciled issuers whose securities are actively traded on marketplaces outside of Canada. If the economic and advisory resources of permitted clients are sufficient to eliminate the necessity of dealing with a registrant in the case of securities of foreign issuers (regardless of where they are listed), then those resources are also sufficient to eliminate the necessity of dealing with a registrant in the case of securities of Canadian issuers when trading on a marketplace outside of Canada. From an investor protection perspective, there is nothing categorically unique about the governing jurisdiction of the issuer that justifies differential treatment for purposes of domestic dealer registration requirements.

It is also unclear why the CSA has adopted such a different approach to Canadian securities (and activities in Canada generally) for purposes of the international adviser exemption as compared to the international dealer exemption (including different terminology for Canadian and foreign securities). Under the international adviser exemption, an adviser is permitted to advise on Canadian securities where such activity is “incidental” to providing advice on foreign securities. Furthermore, the international adviser may not use the exemption if more than 10% of its revenues and the revenues of its affiliates are derived from portfolio management activities in Canada. We recommend that similar standards should also be applied to the international dealer exemption and that the two provisions use consistent terminology with respect to Canadian and foreign securities.

With respect to the intended scope of activity that is “incidental” to providing advice on foreign securities under the international adviser exemption, it would be helpful to have clarification that, where an international adviser is buying or selling securities of a Canadian investment fund that invests primarily in foreign securities for a permitted client, the advice in respect of the securities of the Canadian investment fund itself will be considered incidental to the advice provided by the international adviser on foreign securities. This reflects our understanding of the intended scope of permitted activity under the international adviser exemption.

(d) Exemption from Dealer Registration for Advisers under Section 2.2 of the NRR

The exemption in section 2.2 of the NRR relates to advisers buying or selling securities of a “pooled fund” that is administered by the adviser for a fully managed account. Securities legislation does not contain a definition for the term “pooled fund” nor does the NRR. The better term would be “investment fund” which is a defined term. The “street” meaning of “pooled fund” is generally an investment fund offered on a private placement basis but, if the term was used with this intended meaning, there is no policy reason to restrict the exemption to privately placed investment funds. The exemption should permit an adviser to buy or sell a security of any investment fund that it manages or advises for a fully managed account without being registered as a dealer. The fact that the investment fund has filed a prospectus (and is thus more highly regulated) should not make it necessary for the adviser to register as a dealer. We also question why the exemption is in respect of a fund “administered” by the adviser. This raises some ambiguity as to the relationship that is contemplated. We suggest that the exemption be in respect of an investment fund of which the adviser is “the investment fund manager or the adviser” since both of these functions are the subject of definitions. We would also have comments and concerns regarding the anti-avoidance provision in subsection 2.2(2) of the NRR and the associated guidance in section 2.4 of the Companion Policy. However, we understand from discussions with CSA staff that section 2.2(2) and the associated Companion Policy language appears in the revised NRR in error and will be removed. If this is not the case, we will be pleased to provide such comments.

(e) EMDs Acting as Underwriter

The scope of permitted activities for EMDs set out in section 2.1(1)(d) of the NRR as it currently appears has created some uncertainty as to the ability of EMDs to act as underwriter in respect of prospectus-qualified distributions. We understand based on discussions with OSC staff that the CSA's intention was to permit EMDs to act as underwriter so long as any selling or other trading activity conducted by the EMD in connection with the underwriting falls within the scope of the permitted trading activities in section 2.1(1)(d)(i) and that there was no intention to limit an EMD's ability to underwrite distributions where the distribution is prospectus-qualified. We understand that sections 2.1(1)(d) of the NRR will be revised to provide this clarification. It would also be very helpful for section 2.2 of the Companion Policy to be expanded to provide a plain language explanation of EMDs' ability to underwrite.

4. General Registration Issues

(a) 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, such as families of investment funds or distinct business units of a full-service financial services firm, 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 referrals as between 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 by changed to provide that only *material* changes to the referral arrangement be communicated to affected clients.

(b) Application of Part 8 to Exchange Contracts

In the first draft of the NRR, section 1.1(2) stated that for purposes of the provinces of Alberta, British Columbia and Saskatchewan, a reference to the term "security" or "securities" anywhere in the instrument included "exchange contract" or "exchange contracts". This provision has been changed in the current draft of the NRR such that a reference to the term "security" or "securities" includes "exchange contract" or "exchange contracts" anywhere in the instrument except for Part 8 of the instrument. This change does not appear to be in response to any particular comment received on the first draft of the NRR, nor is the change discussed anywhere in the CSA notices, summaries or commentary accompanying the NRR. This change will require international firms operating under the international dealer or adviser exemption wishing to trade or manage trading in exchange contracts with or for customers in Alberta, British Columbia and Saskatchewan to apply for and obtain exemptive relief from these jurisdictions for these purposes. While we understand that these provinces have generally been prepared to issue exemptive relief to allow such trading, the need to apply for exemptive relief runs counter to the emphasis on harmonization and efficiency that the NRR is attempting to promote. We recommend that the CSA revert to the language in section 1.1(2) of the first draft of the NRR and allow all references to "security" or "securities" in the NRR to include "exchange contract" or "exchange contracts".

(c) Ability of Distinct Business Units with a Registered Entity to use an Exemption

One area of uncertainty is the extent to which firms that have multiple and distinct business units, some of which may be eligible to rely upon an exemption from registration under Part 8, will be affected by the NRR. For example, in Ontario, several broker-dealers currently maintain both a limited market dealer and an international dealer registration, which serve the needs of distinct business activities within the registered entity. Under the NRR, it is possible that certain business units within a firm may qualify for and would seek to use the international dealer exemption, while other business units within the same entity would require the entity to be registered as an EMD to conduct the activities they contemplate. Similarly, a firm registered as a portfolio manager may have a distinct business unit that may qualify for and seek to use the international adviser exemption. If the business unit that otherwise qualified for and sought to utilize the exemption were required to register its individual representatives and comply with the proficiency requirements associated with either the EMD or portfolio manager category, as applicable, this would create a significant impediment for that business unit. Such incremental costs and barriers appear particularly unwarranted where the NRR would otherwise permit those activities to be conducted utilizing an exemption.

Given the current ability of firms to maintain concurrent registrations in multiple dealer categories in Ontario, as well as the fact that the NRR would require prescribed disclosure and a submission to jurisdiction by anyone seeking to use the international dealer exemption or international adviser exemption, we submit that a registered firm should be permitted to utilize an exemption for a distinct business unit or activity within the same firm or organization. This position would be entirely consistent with the tenor of section 2.10 of the Companion Policy and the corresponding CSA Commentary. Section 2.10.5 makes it clear that where a firm is registered in multiple categories, its individual registrants need only comply with the requirements that apply to the particular conduct they are engaged in. Presumably, where those individuals are organized into two or more distinct business units, they need only be registered in the category that applies to the activities undertaken by their specific unit. Additionally, we understand from discussions with staff of the Ontario Securities Commission that the business trigger test would be properly applied to distinguish between business units of an organization, so that only the business unit of a firm that is in the business of dealing or advising would be required to register. If part of a firm is permitted to operate without being registered for failing to meet the business trigger, so too should a distinct business unit of a registered firm be permitted to utilize the international dealer or adviser exemption.

(d) Conflicts of Interest Provisions in Part 6

In some jurisdictions the conflicts of interest which are specifically dealt with in Part 6 have been the subject of exemptive relief orders. The NRR should contain a provision which would effectively "grandfather" such relief. Since the terms of the prohibitions in the NRR are not identical, in many cases, to the terms of the prohibitions from which relief has been obtained, the grandfathering provision must be broad enough to accommodate relief from provisions dealing with similar restrictions. This could perhaps be accomplished by a provision in the NRR which provides that relief from any of the sections referred to in a Schedule to the NRR will be honoured as relief from the corresponding (though admittedly not identical) new prohibition in the NRR. For example, section 6.2(2)(a) of the NRR is similar to section 118(2)(a) in the OSA but not identical. Accordingly, a portfolio manager which has relief from section 118(2)(a) of the OSA has relief which relates to "investing in any issuer" but it is now prohibited by section 6.2(2)(a) of the NRR from "purchasing or selling" securities of an issuer. It has no relief from "selling" (since it wasn't previously required) but given the policy rational for its prior relief, there should be no need to require it to apply for exemptive relief anew. Further, some jurisdictions do not have provisions currently which cover all of the conflicts set out in Part 6. In those jurisdictions the new provisions of the NRR will now apply and there is no existing relief from a similar provision in that jurisdiction to bring forward. Accordingly, previous exemptive relief from provisions in the legislation of another jurisdiction that are covered by the prohibitions in the NRR should be accepted as relief in those other jurisdictions.

With respect to the restricted activities set out in section 6.2(2) of the NRR, this section should retain the concept of an adviser "knowingly" causing an investment portfolio managed by it to conduct the prohibited activity. This is the requirement in section 118(2) of the OSA and other similar provisions in other jurisdictions. Furthermore, the prohibition in section 6.2(2)(a) and (b) against "selling" seems unnecessary and was not, in the case of sections 6.2(2)(a), in many of the predecessor provisions. This restriction makes it difficult to comply with section 111(3) of the OSA which would be necessary if, for instance, a portfolio that is inherited (e.g. on a change of adviser) contains a prohibited security. This is complicated by the fact that the consent necessary would have to be, in a fund situation, from all of the investors in the fund, and by the fact that the consent must be obtained before the purchase. We also note that the exemption from section 115(6) of Regulation 1015 under the OSA found in section 115(7) thereof has not been carried forward in respect of the new prohibition in section 6.2(2)(b).

Section 6.2(2)(c) of the NRR is a provision from which relief from its predecessors has been granted in section 6.1 of National Instrument 81-107 – *Independent Review Committee for Investment Funds*. This relief will need to be amended to refer to the new prohibition. We would also suggest that this is a prohibition which a registered adviser should not have to comply with if client consent is obtained. We realize that the predecessor provisions did not contemplate consent but we see no policy reason not to provide for it. Furthermore, the predecessor provisions only prohibited transactions where a "responsible person" or an "associate of a responsible person" was a party to the investment by the investment portfolio managed by the registered adviser. Section 6.2(2)(c) of the NRR applies to all investment portfolios managed by the registered adviser, regardless of whether one party is a "responsible person" or an "associate of a responsible person". A client of a registered adviser should be able to consent to a transaction between its investment portfolio and that of another client of the adviser (as is often provided for in investment management agreements).

Finally, section 6.6(2)(a) of the NRR should refer to section 4.1(4) of NI 81-102 *or the terms of any applicable regulatory relief* to reflect the fact that the CSA have expanded, in individual orders, the ability to participate in offerings of a connected issuer to the registered adviser.

Conclusion

Osler, Hoskin & Harcourt LLP greatly appreciates 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 Canadian investors and capital markets. Should you wish to engage in such discussions, or if you have any questions regarding the comments provided herein, please feel free to contact any of the following individuals: Mark DesLauriers (by telephone at 416-862-6709 or via email at mdeslauriers@osler.com); Jacob Sadikman (by telephone at 416-862-4931 or via email at jsadikman@osler.com); John Black (by telephone at 416-862-6586 or via email at jblack@osler.com); or Linda Currie (by telephone at 416-862-6600 or via email at lcurrie@osler.com).

Yours very truly,

Osler, Hoskin & Harcourt LLP