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Reply Attention of *Mark Pratt*
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Our File No.
Date *May 29, 2008*

Ontario Securities Commission
20 Queen Street West, Suite 1800
Toronto, Ontario
M5H 3S8

Attention: Mr. John Stevenson, Secretary

and to

Autorité des marchés financiers
Tour de la Bourse
800, square Victoria
C.P. 246, 22 étage
Montreal, Québec
H4Z 1G3

Attention: Ms. Anne-Marie Beaudoin, Corporate Secretary

and to

The Canadian Securities Administrators listed in Schedule A hereto.

Dear Sirs:

Re: Revised Proposed National Instrument 31-103

We are writing to provide the Canadian Securities Administrators (the "CSA") with comments in respect of certain provisions of the February 29, 2008 draft of proposed National Instrument 31-103 – Registration Requirements (the "Instrument") and proposed Companion Policy 31-103CP (the "Companion Policy"). The comments in this letter are our firm comments and do not necessarily reflect the views of any of our clients.

General Comments

In general, the CSA has made significant improvements to the Instrument and the Companion Policy from the original 2007 drafts.

However, in addition to the more substantive comments, below, we would encourage the CSA to conduct a careful, technical review of both the Instrument and the Companion Policy before their publication in final form to ensure consistency of language and use of defined terms. For example, certain parts of sections 5.3, 5.4, 5.5, 5.7 and 5.8 of the Instrument continue to use the term "registrant" (which is not a defined term) while other parts of those sections use the term "registered firm" (which is defined).

Since the Instrument and the Companion Policy are very technical documents and, in some cases, will result in significant changes to registered firms' responsibilities, we would also suggest that the CSA consider preparing plain-language, narrative guides to assist registered firms to understand how the Instrument and the Companion Policy apply to them. As a model in this regard, the CSA might consider the series of guidelines prepared by the Financial Transactions Reports and Analysis Centre of Canada ("FINTRAC") and posted on its website which are designed to assist various industry groups in understanding how the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (Canada) applies to them.

"Business Trigger" in Manitoba

We are disappointed that the Manitoba Securities Commission has decided not to adopt a business trigger for registration of dealers in that province. In our view, this decision will result in an unnecessary legal and regulatory burden for persons and entities that may conduct occasional trades in Manitoba, but are not "in the business" of trading in securities in the province. Since the decision does not appear to be based on a concern that the move to a business trigger would reduce investor protection in Manitoba, the complete harmonization of all elements of the registration regime across Canada should be the highest priority for all CSA members.

Accordingly, we would urge the Manitoba Securities Commission to review its decision not to adopt a "business trigger" for dealer registration with a view to ensuring a consistent, national registration system.

Investment Fund Managers

We believe that certain exemptions from the investment fund manager registration requirement should be included directly in the Instrument or the Companion Policy as described below.

"Pooled Fund" Advisers

Section 2.2(1) of the current draft of the Instrument provides an exemption from the dealer registration requirement for registered advisers who buy and sell "pooled funds" administered by the adviser for fully managed accounts that are created and managed by the adviser. While the term "pooled fund" is not defined in the Instrument, nor elsewhere in Canadian securities legislation, we assume the term has been used in this context to mean an investment fund distributed pursuant to an exemption from the prospectus requirement. No exemption is provided in s. 2.6 of the Instrument from the requirement for "pooled fund" advisers to be registered as investment fund managers and item 95 in the summary of comments accompanying the Instrument (the "Summary of Comments") indicates that the CSA will initially consider this

issue on a case-by-case basis and, depending on its experience, may subsequently adopt a uniform exemption.

In our view, the dealer registration exemption set out in section 2.2(1) has been drafted, appropriately, to apply only in very narrow circumstances (i.e. where the same entity manages the client's managed account and the pooled funds purchased for that account). We assume the rationale for the exemption was that, in these very narrow circumstances, the additional category of registration would add very little additional investor protection and would not add to the CSA's ability to regulate all of the entity's activities (the CSA's ability to regulate appropriately having been mentioned in item 91 of the Summary of Comments as a rationale for generally requiring registration of investment fund managers). In the narrow circumstances that are contemplated by section 2.2(1), we believe the same rationale can and should be applied to exempt advisers who act as pooled fund managers from the requirement to register as investment fund managers. In the absence of such an exemption, we expect that the CSA will receive exemptive relief applications from many pooled fund managers which raise no substantive policy concerns.

Accordingly, we recommend that the Instrument (a) include a definition of "pooled fund" and (b) include an exemption from the investment fund manager registration requirement that is parallel to the dealer exemption currently contained in s. 2.2(1).

General Partners of a Family of Limited Partnerships

In item 99 of the Summary of Comments, the CSA acknowledge and agree with a comment that, in certain circumstances, registration of multiple entities as investment fund managers within a fund complex should not be necessary, but indicate that it is more appropriate to deal with the issue on a case-by-case basis.

Although we recognize that there may be a variety of situations that the CSA would want to consider on a case-by-case basis, we believe that the specific situation described in item 99 of the Summary of Comments is straight forward and that groups of funds and their managers that are under common ownership and have common directors and/or officers, and who have not arranged their affairs for the purpose of avoiding the investment fund manager registration requirement, should not be required to go to the effort and expense of seeking regulatory relief. In our experience, this situation is particularly applicable to groups of funds that are formed as limited partnerships, whose general partners are formed, owned and managed by the principals of the funds' portfolio manager and who have delegated management and investment management authority to the portfolio manager.

Accordingly, we urge the CSA to reconsider this issue and to adopt a limited exemption from the investment fund manager registration requirement for groups of entities that are under common ownership and with common directors and/or officers, provided that one of the entities in the group is fully registered and is, in fact, responsible for carrying on the management of all of the funds.

Exempt Market Dealers

We are disappointed with the inconsistent approaches being taken by the securities regulatory authorities in British Columbia and Manitoba with respect to the registration of dealers in the exempt market. While we acknowledge that there are legitimate policy arguments in favour of and against the registration of exempt market dealers, it does not appear to us that those arguments should differ from province to province (either these dealers' clients need the protection afforded by registration or they do not) or if the dealer is carrying on business in more than one jurisdiction or in more than one category of registration within a single jurisdiction. Given the very narrow circumstances in which the British Columbia and Manitoba exemptions would seem to apply, the complete harmonization of all elements of the registration regime across Canada should be the highest priority for all CSA members.

Accordingly, we would encourage all members of the CSA to reconsider the policy rationale underlying the "exempt market dealer" registration category with a view to adopting a single, national approach to the registration of dealers in the exempt market.

Registrations Obtained in Reliance on Exemptive Relief

Certain international adviser registrants in Ontario have obtained registration or been permitted to do business in reliance, in part, on exemptions granted in respect of certain of the provisions of Ontario Rule 35-502 (e.g. with respect to the list of permitted clients). There may also be registrants in other categories who have obtained registration or who are carrying on business in reliance, in part, on exemptions from other registration requirements (other than proficiency requirements, which are of the subject of exemptive relief applications). To the extent that exemptive relief was granted from regulatory instruments or provisions that will no longer exist under the Instrument and the Companion Policy or with respect to categories of registration that have been eliminated, it is uncertain whether firms may continue to rely on previously granted exemptive relief or whether the CSA will consider granting discretionary relief to permit such registered firms to continue to conduct their business and deal with and/or advise their existing clients..

Accordingly, we recommend that the CSA consider including either a transitional provision in Part 10 of the Instrument or guidance in the Companion Policy to clarify the status of relief granted to registered firms prior to the date the Instrument comes into force.

Compliance System

General

We are generally supportive of the description of registered firms' compliance responsibilities under subsection 5.23(1)(a) of the Instrument and section 5.9 of the Companion Policy.

However, while we do not disagree with the requirement under subsection 5.23(1)(b) that a registered firm establish written policies and procedures sufficient to "manage the risks associated with its business in conformity with prudent business practices", we note that the Companion Policy provides no additional explanation of this provision. We also note that firms

will be subject to a new obligation under subsection 5.15(1)(b) to maintain records to demonstrate compliance with securities legislation which, presumably, includes compliance with subsection 5.23(1)(b). Since the scope of these two provisions is very broad and firms will be subject to examination for compliance with them, we believe further guidance is necessary.

Accordingly, we would encourage the CSA to include in the Companion Policy (a) a discussion of the scope of registered firms obligations under subsection 5.23(1)(b), including a description of the types of risks that a firm should consider (eg. financial, reputational, operational, etc.) as well as a discussion of what the CSA consider to be "prudent business practices" (eg. separation of duties, separation of staff, formation of risk management committees, etc.) and (b) a general discussion of firms' compliance record-keeping obligations, with a particular emphasis on record-keeping obligations in respect of compliance with subsection 5.23(1)(b).

CCO Proficiency Requirements

We commend the CSA for responding to comments regarding the appropriate educational proficiency requirements applicable to chief compliance officers ("CCOs") of investment fund managers. However, we believe some additional amendments should be made to the employment-based proficiency requirements applicable to investment fund manager CCOs and portfolio manager CCOs.

First, we are concerned about the requirements that investment fund manager CCOs' months or years of work experience be "consecutive". We would point out that portfolio manager CCOs' work experience is not required to be consecutive and, in fact, that requirement was removed from this draft of the Instrument. We believe that the "consecutive" requirement should also be removed from the investment fund manager CCOs' work experience requirements.

Second, we are concerned that investment fund manager CCOs' work experience can only have been spent with an investment fund manager, not with any other category of registered firm and that a portfolio manager CCOs' work experience can have been served with either a registered adviser or a registered dealer, but cannot have been spent with a registered investment fund manager. In our view, the *skills* obtained through employment in a compliance capacity with a registered firm (as opposed to the substantive knowledge about the regulatory regime applicable to that firm) ought to be transferrable to any other category of registered firm. The view that similar skill sets are applicable to CCOs in all categories of registration is supported by the fact that section 5.25 of the Instrument requires CCOs of all types of registered firms to perform exactly the same functions.

Third, we note that in subsection 2.10.1 of the Companion Policy the CSA indicates that individuals requiring registration in multiple categories must meet the proficiency requirements of both registration categories and subsection 2.9.2 provides that a firm registered in multiple categories may have only one CCO, but that person must meet the most stringent of the proficiency requirements of the firm's various categories of registration. We expect that many firms will seek registration as both a portfolio manager and an investment fund manager and will seek to have one individual serve as CCO for both categories of registration. It is already quite difficult for firms to find qualified people to act as CCOs and we believe that requiring an otherwise very experienced and qualified individual to satisfy the more stringent proficiency

requirements for investment fund manager CCOs will make that task much more difficult. We expect that this situation will result in many firms that are registered in both of these categories seeking exemptive relief for their proposed CCOs on the basis of alternative proficiency, a process that is time consuming for CSA staff and registered firms.

Based on the foregoing, we recommend that the work-related proficiency requirements for CCOs of portfolio managers and investment fund managers be amended to (a) remove the word "consecutive" from clauses 4.15(a)(iii)(A) and (B) and 4.15(b)(iii) of the Instrument and (b) provide in sections 4.13 and 4.15 that CCOs may have obtained their work related experience by working in a compliance capacity with any registered firm for the applicable period of time.

Complaint Handling

There appears to us to be some inconsistency or lack of clarity between section 5.27 of the Instrument and section 5.12 of the Companion Policy with respect to investment fund managers' and exempt market dealers' responsibilities regarding client complaints.

Although the Instrument indicates that investment fund managers are exempt from Division 6 of Part 5, as are exempt market dealers in respect of permitted clients, no similar language is included in section 5.12 of the Companion Policy. In our view, this suggests that investment fund managers and exempt market dealers may still be subject to a general obligation to respond appropriately to complaints from clients, even though they are not required to comply with the technical requirements of the Instrument. This general obligation may be supported by the "duty of care" provisions in local rules or legislation, such as section 1.2 of OSC Rule 31-505 or the proposed section 32(3) of the OSA. If the obligation does exist, its application to investment fund managers would be particularly unclear since it is not clear who would be considered a "client".

Based on the foregoing, if the CSA are of the view that investment fund managers and exempt market dealers have a general obligation with respect to the management of client complaints, we suggest that the Instrument or the Companion Policy be amended to clarify (a) who the CSA would consider to be a "client" of an investment fund manager and (b) the scope of the general obligation.

Conflict of Interest Provisions

Prohibition on Certain Managed Account Transactions

We are generally very supportive of the way in which section 6.2 has been drafted. In our view, this section is significantly clearer and easier to apply than, for example, the existing section 118 of the OSA.

However, we are concerned about the addition in this draft of the Instrument of clause 6.2(2)(c), which will prohibit cross-trades between any two accounts managed by the same adviser. We do not believe there is a strong policy rationale for this prohibition, which goes beyond what is currently prohibited under section 118 of the OSA.

Accordingly, we would urge the CSA to consider removing clause 6.2(2)(c) from the Instrument.

Limitations on Advising

We do not understand subsection 6.6(2)(a) of the Instrument which exempts a registered firm from the prohibition on acting as an adviser in respect of securities issued by the registered firm itself or its related or connected issuers if the firm is "acting as an adviser in respect of a fully-managed account and the transaction is made in accordance with subsection 4.1(4) of National Instrument 81-102". Specifically, we do not understand how subsection 4.1(4) of National Instrument 81-102 applies to the management of a fully-managed account.

We recommend that section 6.6(2)(a) of the Instrument either be amended or that an explanation be provided in the Companion Policy.

Transitional Provisions

Change of Registration Categories – Firms

We do not understand the decision expressed in section 10.1(2) of the Instrument to automatically convert registered international dealers to the exempt market dealer category. In our view, many international dealers will not want to comply with the additional obligations that will apply to exempt market dealers.

Accordingly, we recommend that international dealers be given a time period within which to notify the CSA whether they wish to convert to the exempt market dealer category or to abandon their registration and conduct business solely in reliance on the exemption provided for in section 8.15 of the Instrument if it is available.

Registration of UDPs and CCOs

We believe that clarification is required in sections 10.5 and 10.6 of the Instrument regarding the process to be followed to register UDPs and CCOs of investment fund managers, particularly those who are already registered as UDPs and CCOs because their employer is currently registered as an "investment counsel/portfolio manager" or the equivalent. For example, a person who is the CCO of a registered portfolio manager on the date the Instrument comes into force for an entity that wishes to become registered as an investment fund manager would appear to be completely exempt from the proficiency requirements applicable to investment fund manager CCOs *only if* that person applies for registration within one month (s. 10.6(2)); however, if they apply for registration later than one month after the Instrument comes into force, but earlier than six months, they will be exempt from the proficiency requirements only until the first anniversary of the date on which the Instrument comes into force (s. 10.6(3)). It would therefore appear that a CCO of a dually registered portfolio manager/investment fund manager who applies for registration between the one month and six month anniversaries of the Instrument and who, on the first anniversary of the Instrument, satisfies the portfolio manager CCO proficiency requirements but not the investment fund manager CCO requirements would no longer be qualified to act as the entity's investment fund manager CCO. This seems to be a particularly harsh result in light of the discussion earlier in this letter regarding the difficulty of complying

with the work-related proficiency requirements for investment fund manager CCOs and our view that the *skills* obtained by acting in a compliance capacity for any registrant are applicable to other categories of registration.

Since both sections 10.5 and 10.6 of the Instrument refer to persons or companies that are *registered* firms on the date the Instrument comes into force, paragraphs 10.5(b) and 10.6(b) seem to suggest that UDPs and CCOs who are already registered will, nevertheless, be required to submit new applications for registration, notwithstanding that they will be exempt from the proficiency requirement pursuant to subsection 4.16(1).

We recommend that the sections 10.5 and 10.6 be amended to provide greater clarity regarding the transitional obligations of firms, particularly investment fund managers, with respect to the registration of their UDPs and CCOs.

Thank you for the opportunity to comment on the Instrument and the Companion Policy. If you have any questions regarding any of our comments, please feel free to contact the undersigned.

Yours truly,

Mark Pratt

Schedule A

British Columbia Securities Commission
Alberta Securities Commission
Saskatchewan Securities Commission
Manitoba Securities Commission
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