SIFMA®
Securities Industry and
Financial Markets Association

May 29, 2008

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
Register of Securities, Prince Edward Island
Nova Scotia Securities Commission
Superintendent of Securities, Newfoundland and Labrador
Register of Securities, Northwest Territories
Register of Securities, Yukon Territory
Register of Securities, Nunavut

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Dear Sirs / Mesdames,

Re: Comments on Proposed National Instrument 31-103 – *Registration Requirements*

I. INTRODUCTION

The Securities Industry and Financial Markets Association ("SIFMA") offers its additional comments on the revised Proposed National Instrument 31-103 – *Registration Requirements* ("NI 31-103"), issued for comment on February 29, 2008. SIFMA commented on the previous version of NI 31-103 by letter dated July 2, 2007.

The Securities Industry and Financial Markets Association brings together the shared interests of more than 650 securities firms, banks and asset managers locally and globally through offices in New York,

Washington D.C., and London. Its associated firm, the Asia Securities Industry and Financial Markets Association, is based in Hong Kong. SIFMA's mission is to champion policies and practices that benefit investors and issuers, expand and perfect global capital markets, and foster the development of new products and services. Fundamental to achieving this mission is earning, inspiring and upholding the public's trust in the industry and the markets. (More information about SIFMA is available at http://www.sifma.org.)

SIFMA members have a direct interest in NI 31-103 because of the tremendous amount of cross-border securities activities undertaken by SIFMA members in Canada – all totaled securities transactions between the US and Canada topped $2.8 trillion in 2007. Many of the approximately 650 securities firms, banks and asset managers which are members of SIFMA are registered in Canada, particularly under the "international" categories in Ontario. In addition, a significant number of SIFMA members rely on certain currently available dealer exemptions contained in Canadian provincial and territorial securities legislation to access the Canadian capital markets and provide services to Canadian-resident investors.

SIFMA strongly supports efforts to develop updated regulatory structures to address the increasingly global nature of financial markets – efforts that we believe can elevate global supervisory practices, promote collaboration among like-minded regulators and enhance investor protection. Overall, SIFMA believes that there are three "gateways" (none of which are exclusive) to reform the regulation of cross-border business and alleviate the complexities, costs and burdens on cross-border business resulting from the need to comply with differing national rules; they are: exemptive relief; regulatory recognition (unilateral or bilateral); and rules standardization.[1] While revisions to NI 31-103 have resulted in improvements, we still believe that the direction of the proposal imposes new regulatory hurdles on securities firms and their clients, and misses a unique opportunity to both improve efficiencies in the US-Canadian cross-border market for securities and expand the attractiveness to issuers and investors.

SIFMA acknowledges the recent announcement[2] by the Canadian Securities Administrators ("CSA") and the U.S. Securities and Exchange Commission ("SEC") agreeing to a process agreement in discussing mutal recognition araangements between the U.S. and Canada. SIFMA supports this important first step between the CSA and SEC to address and eliminate dual regulation, redundancy and regulatory overlap. However, SIFMA urges the CSA to review NI 31-103 in light of this recent development to ensure that it does not impose requirements under NI 31-103 that are inconsistent with mutual recognition. SIFMA is concerned that the implementation of NI 31-103 as currently proposed while concomitantly negotiating mutual recognition with the SEC will result in significant market disruptions both in terms of client relationships and regulatory uncertainty for dealers and advisers.

II. SUMMARY OF COMMENTS

For the reasons stated in this letter, SIFMA's main comments are the following:

Mutual Recognition

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[1] See report of the US-EU Coalition on Financial Regulation, "Mutual Recognition, Exemptive Relief and "Targeted" Rules' Standardisation: The Basis for Regulatory Modernisation", http://www.sifma.org/legislative/international/pdf/US-EUcoalition-fin-regualtion-reportmar08.pdf

[2] See SEC news release, "Schedule Announced for Completion of U.S.-Canadian Mutual Recognition Arrangement Process Agreement", 2008-98, May 29, 2008.

1. The CSA should promote mutual recognition of other jurisdiction's securities regulatory regimes and ensure that NI 31-103 is not inconsistent with any mutual recognition arrangement. Requiring registration of non-Canadian broker-dealers and advisers that are regulated in their home jurisdictions is unnecessary and adds regulatory costs to conducting securities trading and advising activities with Canadian clients.

2. NI 31-103 is a burdensome re-regulation of certain existing activities because it removes important exemptions and implements significant new registration requirements which will likely only be an interim rule until such time as the CSA negotiates a mutual recognition agreement with the SEC. The CSA should modify the proposed "exempt market dealer" category to recognize, among others, U.S., U.K. and E.U. registrations and not impose redundant requirements for firms that are registered in jurisdictions with suitable regulatory regimes.

National Registration

3. SIFMA believes that the end result of the implementation of NI 31-103 must be a "national" system with "one-stop" national registration. As proposed, NI 31-103 falls short of this result and as such may be viewed as a missed opportunity to implement meaningful and necessary changes. The CSA should ensure that registration in one province ensures registration in all provinces and territories to avoid inconsistent application of NI 31-103 and unnecessary local review in all jurisdictions. Registration in one province should automatically mean registration in each province where the registrant wishes to be registered. This can be achieved through NI 31-103, the passport system, the national registration system or a combination of these initiatives.

Recognition of Foreign Requirements/Standards

4. The CSA should recognize foreign books and records, capital, insurance, individual proficiency and financial statement filing requirements rather than imposing inconsistent standards that are redundant or that foreign firms may not be able to meet because of foreign corporate or securities laws.

Permitted/Prohibited Activities

5. Foreign regulated dealers that wish to register as "exempt market dealers" should be permitted to extend credit and provide margin lending to Canadian clients because such dealers are subject to stringent requirements in their home jurisdictions. The CSA should not require costly, case-by-case applications and relief for such dealers.

6. The CSA should not require personnel trading as principal for a registered dealer to individually register in Canada.

7. The CSA should permit dealers and advisers relying on the international dealer and international adviser exemptions to trade in or advise on interlisted securities on non-Canadian markets whether or not such securities are "foreign securities".

8. The CSA should remove the restrictions contained in the international dealer exemption as these are merely a restatement of Section 208 of the Regulation made under the *Securities Act* (Ontario) which has been the source of many technical and interpretational difficulties.

9. The CSA should permit client contact between foreign-based sub-advisers and Canadian clients so that the foreign-based sub-advisers are able to comply with the laws in their home jurisdictions.

10. The CSA should clarify that dealers and advisers relying on the international dealer or international adviser exemption or foreign firms registered in Canada under NI 31-103 are permitted to hold client assets pursuant to their home jurisdictions' laws.

Permitted Clients

11. The CSA should decrease the financial asset threshold for individual "permitted clients" and the shareholder equity threshold for corporations in order to harmonize the permitted client dealer and adviser registration exemption with U.S. standards.

12. The CSA should extend the international dealer exemption to unregistered investment funds that privately place securities with "permitted clients".

Role of Compliance Officers

13. The CSA should make clear the roles, responsibilities and liabilities of chief compliance officers and ultimate designated persons under NI 31-103.

Forms/Filings

14. The time periods for filings under the rules should be lengthened as 5- and 10-day time periods are generally too short for ensuring compliance.

15. The proposed registration forms are significantly more burdensome and bureaucratic in requiring extensive certifications and the submission of significant documentation, including business plans, marketing material, employment agreements, compensation arrangements, etc.

Exchange-Traded Futures and Options

16. The CSA should harmonize the Canadian rules on exchange-traded options, futures and options thereon as several provinces regulate futures and options under securities legislation and there are no compelling investor protection or other reasons for jurisdictions such as British Columbia, Alberta and Saskatchewan to not extend the international dealer and international adviser exemption to such products. Furthermore, the elimination of the "flow-through" analysis should extend to the *Commodity Futures Act* (Ontario).

Fees - Unregistered Firms

17. The OSC should amend OSC Rule 13-502 – *Fees* so that unregistered dealers, advisers and investment fund managers are not required to pay an annual capital markets participation fee.

Transitional Issues and Grandfathering

18. The CSA should include "grandfathering" provisions in NI 31-103 so that existing, permitted activities can continue for the benefit of investors.

IV. SIFMA COMMENTS

Mutual Recognition

Overall, SIFMA believes that there are three "gateways" (none of which are exclusive) to reform the regulation of cross-border business and alleviate the complexities, costs and burdens on cross-border business resulting from the need to comply with differing national rules; they are: exemptive relief; regulatory recognition (unilateral or bilateral); and rules standardization. SIFMA believes that by removing barriers to entry for appropriately regulated firms from countries with suitable securities regulatory frameworks that investors in all jurisdictions will benefit from the free trade in securities between nations, as envisaged by G7 nations.[3] Importantly, the Canadian government played a lead role within the G7 in calling for "free trade in securities", and also set forth this goal in its 2007 Budget, noting "To move free trade in securities forward, collective action will be required in Canada among governments, provincial securities commissions, self-regulatory organizations and market participants.[4] SIFMA is encouraged by the recent announcement of the CSA and SEC regarding mutual recognition. However, SIFMA believes that the CSA should carefully consider whether the implementation of NI 31-103 is consistent with the mutual recognition process. SIFMA is concerned that implementing NI 31-103 without taking into account the mutal recognition process may cause market disruption as dealers and advisers seek to comply with NI 31-103 and are then confronted with differing rules under mutual recognition.

SIFMA believes that rather than requiring dealer and adviser registration for international firms from sophisticated jurisdictions with acceptable securities regulatory regimes wishing to conduct business with Canadian-resident investors, the CSA should recognize that such entities are appropriately regulated in their home jurisdiction and not impose additional, burdensome and/or inconsistent requirements on these advisers and dealers.

National Registration

From an international perspective, it is critical that NI 31-103 represents a truly national, effective and streamlined registration system. The most important aspect of requiring dealer or adviser registration is that the CSA should ensure that registration in one province ensures registration in all provinces and territories to avoid inconsistent application of NI 31-103 and unnecessary local review in all jurisdictions. Registration in one province should automatically mean registration in each province where the registrant wishes to be registered without additional regulatory review. This can be achieved through NI 31-103, the passport system, the national registration system or a combination thereof. Applying for registration in Canada should be a one step process rather than a thirteen step process with local distinctions.

Recognition of Foreign Requirements/Standards

Should the CSA decide to continue with the current regulatory framework set forth in NI 31-103 and impose a registration requirement on regulated foreign dealers and advisers, any registration

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[3] G7 Finance Ministers committed to further liberalize cross-border capital markets by exploring "… free trade in securities based on mutual recognition of regulatory regimes." Essen, Germany, February 9-10, Finance Ministers' Communiqué.

[4] Budget 2007, Department of Finance Canada, "Creating a Canadian Advantage in Global Capital Markets".

requirements should recognize and be sensitive to the regulatory requirements in the home jurisdictions of such dealers and advisers.

The CSA should recognize foreign books and records, capital, insurance, individual proficiency and financial statement filing requirements rather than imposing redundant requirements that foreign firms may not be able to meet because of foreign corporate or securities laws. For example, the CSA should not require that foreign firms submit audited financial statements with a balance sheet signed by a director of the firm within 90 days of the firm's fiscal year-end. First, not all firms are required to prepare audited financial statements and therefore, imposing such a requirement would increase a firm's cost of doing business. Second, not all jurisdictions require that a director of the firm sign the balance sheet and this raises significant liability issues. Third, most firms are not required to file financial statements within 90 days of their fiscal year-ends and requiring this has increased the costs for firms to complete audits and has also resulted in many deficient filings in Canada. The U.S. requirement is to file the financial statements within 180 days of a firm's fiscal year-end.

SIFMA wishes to emphasize and reiterate a comment from our 2007 letter, where we submitted that the current regime of filing individual proficiency waiver applications for U.S.-registered personnel is arbitrary, slow and bureaucratic. This requirement has been a significant hurdle for SIFMA members wishing to register individuals and the current discretionary approach is not working well and should be harmonized with international requirements.

With respect to the portfolio manager category of registration, the CSA should expand the associate advising representative category to include client service representatives where such representatives may provide some level of advice in their client service role but will not be able to meet the full proficiency requirements and the accounts are otherwise advised by a registered portfolio manager.

Permitted/Prohibited Activities

SIFMA submits that foreign regulated dealers that wish to register as "exempt market dealers" should be permitted to extend credit and provide margin lending to Canadian clients because such dealers are subject to stringent requirements in their home jurisdiction. The CSA should not require costly, case-by-case applications and relief for such dealers as it creates uncertainty for existing margin clients and prime brokerage clients.

SIFMA submits that the CSA should not require personnel trading as principal for a registered dealer to individually register in Canada. SIFMA believes that there is no investor protection benefit from requiring principal traders to register in Canada as these traders have no client contact. Furthermore, the requirement to register principal traders will present a major problem for the large international investment dealers who would be expected to register as exempt market dealers.

In addition, the CSA should consider permitting dealers and adviser relying on the international dealer and international adviser exemptions to trade in or advise on interlisted securities whether or not such securities are "foreign securities". SIFMA submits that as a compliance matter it is not possible for dealers and advisers to track the securities which would not be considered "foreign securities" but trade on U.S. or other foreign exchanges. Furthermore, the restriction with respect to "foreign securities" is a significant limitation that has not historically been imposed in Canada, except in Ontario and Newfoundland and Labrador. SIFMA does not understand the policy rationale for this restriction particularly where it has not been a restriction in most Canadian provinces and territories.

With respect to the sub-adviser exemption, the CSA should permit client contact between foreign-based sub-advisers and Canadian clients so that the foreign-based sub-adviser are able to comply with

the laws in their home jurisdictions. For example, US-registered advisers are required to make themselves reasonably available to clients for questions and all such client contact should not need to be intermediated or chaperoned by a Canadian registered adviser.

The CSA should confirm that a joint supervisory and compliance arrangement can be established and maintained between an exempt international dealer and an IDA-registered firm (as permitted under OSC Notice 35-702 – *Residency Requirements for Certain Non-Resident Salespersons and Supervisors)* in all CSA jurisdictions.

In addition, the CSA should modify the existing custody requirements so that foreign firms that provide custody services would be permitted to custody client assets pursuant to their home jurisdictions' rules without the need for additional relief. SIFMA believes that section 5.35 of NI 31-103 does not clearly provide non-resident firms who choose to register in Canada with appropriate guidance on the custody of client assets and should be clarified to recognize home jurisdiction requirements.

Permitted Clients

SIFMA believes that the CSA should lower both the financial asset threshold for individual "permitted clients" and the shareholder equity threshold for corporate "permitted clients". SIFMA notes that the current corporate threshold under the Ontario "international dealer" regime and pursuant to the "accredited investor" exemption outside of Ontario is $5 million and SIFMA does not believe there is any need to significantly raise this threshold to $100 million in shareholders' equity.

For individual clients, SIFMA notes that the current "accredited investor" exemption available in most provinces outside of Ontario is $1 million or more of financial assets. Again, SIFMA does not believe it is necessary to establish a much higher standard.

By way of example, under paragraph 49 of the UK Financial Services and Markets Act 2000 (Financial Promotions) Order 2005, a corporation with £5 million or more in net assets is a "high net worth company". Financial promotions may be made to such an entity by persons other than FSA-authorized persons without running afoul of the financial promotions restriction. SIFMA believes that unregistered firms should be permitted to trade with or advise corporations that have net assets of at least $5 million or at a level considerably reduced from the proposed $100 million threshold.

Role of Chief Compliance Officer

SIFMA believes that the CSA should make clear the roles, responsibilities and liabilities of chief compliance officers ("CCO") and ultimate designated persons ("UDP") under NI 31-103. Typically, the CCO does not have the ability to implement changes to a firm's compliance program. As the head business person, the UDP would be the person who would take recommendations from the CCO and implement additional policies and procedures where issues are present.

SIFMA acknowledges the changes made by the CSA in NI 31-103 and the Companion Policy to distinguish between the roles and responsibilities of the CCO and the UDP. However, the CSA should make further clarifications by delineating the specific role of the CCO and a CCO's liability. SIFMA believes that the CSA should adopt a "reasonably prudent person" standard for evaluating whether a CCO has fulfilled his or her duties and responsibilities under securities legislation. SIFMA notes that it has published a "White Paper on the Role of Compliance" and Market Regulation Services Inc. and the Investment Dealers Association of Canada, among others, have published the "Joint Regulatory Notice – The Role of Compliance and Supervision" which should guide the CSA. SIFMA believes

that this issue is of significant importance for registered firms to implement a proper and effective compliance system.

Forms/Filings

SIFMA believes that the time periods for filings under the rules should be lengthened as 5- and 10-day time periods are generally too short for ensuring compliance. SIFMA believes that 30-days after the occurrence of an event which requires notice is a more manageable time period for reporting such changes.

The proposed registration forms are significantly more burdensome and bureaucratic in requiring extensive certifications and the submission of significant documentation, including business plans, marketing material, employment agreements, compensation arrangements, etc. Obviously, the reporting and updating burden on these filings will increase significantly.

Exchange – Traded Futures and Options

SIFMA believes that where each CSA member has the authority, such CSA member should harmonize the Canadian rules on exchange-traded options, futures and options on futures as several provinces regulate futures and options under their securities acts and there are no compelling reasons for jurisdictions such as British Columbia, Alberta and Saskatchewan to not extend the international dealer and international adviser exemption to such products. For example, exchange-traded options are regulated as securities in Ontario and as exchange contracts in British Columbia. SIFMA does not believe that there exists any policy or investor protection reason why an international firm relying on the international dealer or international adviser exemption under NI 31-103 could trade with or provide advice with respect to options to a "permitted client" in Ontario but not in British Columbia, Alberta or Saskatchewan. Furthermore, there is no reason why a foreign dealer or adviser could rely on the international dealer or adviser exemptions contained in NI 31-103 to trade with or advise on exchange-traded futures contracts in Nova Scotia but not in Alberta. SIFMA urges those jurisdictions with the authority to make harmonizing changes to do so under NI 31-103.

Fees – Unregistered Firms

SIFMA submits that the OSC (and CSA) should not charge "capital market participation fees" on unregistered dealers, advisers and investment fund managers. Such a fee on unregistered firms often becomes a compliance issue because unregistered firms may not be aware of the fee and in any event is overly bureaucratic in its application to international firms.

Transitional Issues and Grandfathering

"Transitional" issues are very important and need to be further clarified. Despite the major impact that NI31-103 will have on the ability to do cross-border business in Canada, the proposal does not set out any grandfathering relief. Grandfathering rules will be very important for clients, dealers, advisers and all market participants as there is the potential for significant disruption to existing client relationships if NI31-103 is adopted as proposed. Consequently, SIFMA submits that Canadian investors and their existing dealers and advisers be afforded a lengthy transition period. We also respectfully urge the CSA to consider grandfathering as an approach that would provide dealers and advisers, and their Canadian customers with an effective manner to produce certainty and a continuation of existing business relationships.

We appreciate the opportunity to submit these comments.

Very truly yours,

David G. Strongin
Managing Director