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Via Email

September 30, 2010

John Stevenson
Secretary
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Anne-Marie Beaudoin
Corporate Secretary
Autorité des marches financiers
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Dear Mr. Stevenson and Ms. Beaudoin:

Re: Notice and Request for Comments – Proposed Amendments to National Instrument 31-103, *Registration Requirements and Exemptions* and to National Instrument 33-109, *Registration Information* (the "Proposed Amendments")

This comment letter is submitted on behalf of the following entities within RBC: RBC Dominion Securities Inc.; RBC Direct Investing Inc.; Royal Mutual Funds Inc.; Commission Direct Inc.; RBC Asset Management Inc.; RBC Phillips, Hager & North Investment Counsel Inc.; Phillips, Hager & North Investment Management Ltd.; and Phillips, Hager & North Investment Funds Ltd. We appreciate the opportunity to provide our comments in relation to the Proposed Amendments.

GENERAL COMMENTS

At the outset, we wish to express our continued support of the Canadian Securities Administrators' (CSA) efforts to harmonize and streamline the regulatory framework governing registration matters across Canada. We believe that the Proposed Amendments have introduced positive changes and we are encouraged by the CSA's overall responsiveness and direction on some of the key areas of concern highlighted by registered firms since the implementation of National Instrument 31-103 – *Registration Requirements and Exemptions* (NI 31-103). In particular, we note the elimination of the 36 months time limit for individuals holding the Chartered Financial Analyst designation; additional exemptions from certain requirements provided to members of self regulatory organizations (SRO), namely complaint handling; extending the registration exemption to all investment fund securities to be traded by an adviser to managed accounts; and the removal of the requirement for mutual fund dealers and investment fund managers to establish whether a client is an insider of a publicly traded issuer. That being said, we do have comments relating to the Proposed Amendments; our comments are outlined below.

SPECIFIC COMMENTS

1. National Instrument 31-103 – *Registration Requirements and Exemptions*

Part 3 – Registration requirements- individuals – Division 1 - General proficiency requirements

Section 3.3 - Time limits on examination requirements

With the implementation of NI 31-103, we believe that the CSA has moved in the right direction to streamline the proficiency requirements as they apply to Investment Industry Regulatory Organization of Canada (IIROC) members. It is our view that the elimination of the duplicative and sometimes conflicting proficiency requirements from NI 31-103 has greatly reduced the need for IIROC dealers to apply for exemptive relief from such requirements. The Proposed Amendments indicate that an individual applying for registration or reinstatement of registration must have passed the requisite exams not more than 36 months before the date of application for registration otherwise the individual will need to rewrite the course exams. However, we note that the requirements under IIROC Rule 2900 Part II, Examination Rewrite Requirements and Course and Examination Exemptions, which provides that an individual has three (3) years from the date they were last registered or two (2) years before the date of application if they were not registered to file an application for registration, are in conflict with the proposed amendment to section 3.3 of NI 31-103. We further note that the Companion Policy for NI 31-103 indicates that IIROC is responsible for setting the proficiency requirements for the dealing representatives of its members and it is our view that NI 31-103 should be amended to indicate the same. In order to avoid confusion for IIROC members, we believe that section 3.3 should be included under section 9.3 of NI 31-103 as a provision from which IIROC members are excepted.

Part 8 - Exemptions from the requirement to register - Division 1 - Exemptions from dealer and underwriter registration and Division 2 - Exemptions from adviser registration

Section 8.18(4)(b) and Section 8.26(4)(e) – Client notice requirement

With the proposed wording changes to the client notice requirement under sections 8.18(4)(b) and 8.26(4)(e), we are seeking clarification as to whether an international dealer or international adviser would be required to send existing clients a new notice with the revised wording changes. It is our view that if a client has previously received notice prior to the implementation of the Proposed Amendments, the international dealer or international adviser should be required to send the client notice with the revised wording changes to new clients only.

Registration Exemption for Sub-Advisers

Based on the Notice and Request for Comment regarding the Proposed Amendments, we recognize that the CSA is continuing to evaluate the registration exemption for sub-advisers. Currently, in Ontario, the exemption remains in section 7.3 of OSC Rule 35-502 – *Non Resident Advisers* and in other jurisdictions discretionary relief may be granted on a similar basis. We believe that it would be beneficial for the CSA to consider including the Ontario exemption in NI 31-103 in the furtherance of the goal of registration uniformity across Canada.

Part 13 – Dealing with clients - individuals and firms – Division 5 - Complaints

Section 13.16 – Dispute Resolution Service

The proposed amendment to section 13.16 indicates that a registered firm must participate in an independent dispute resolution service in cases where the complaint relates to a trading or advising activity, a breach of client confidentiality, theft, fraud, misappropriation or forgery, misrepresentation, an undisclosed or prohibited conflict of interest or personal financial dealings with a client. We strongly recommend that the CSA should consider excluding "personal financial dealings with a client" from the list of possible complaints that may be escalated to a dispute resolution service. It is our view that only

disputes between the registered firm and a client that arise within the contractual relationship between the registered firm and the client should be escalated to a dispute resolution service and not disputes that fall outside this contractual relationship. Where a registered firm finds that personal financial dealings have taken place between one of its representative and a client, and the firm neither condoned nor had any knowledge of such activity, it is our view that such a firm could sufficiently address the issue in accordance with the conflicts of interest requirements under NI 31-103 as well as applicable self-regulatory organization rules. We believe that if a complainant wants to seek damages from a representative for losses incurred by the complainant as a result of such personal financial dealings, then the complainant should pursue the matter against the representative outside of the securities industry's dispute resolution process.

Further, as a general matter, we wish to point out that the language set out in section 13.16 is more favourable than the applicable SRO rules which mandate the use of an ombudsperson service approved by the SRO (that is, the OBSI). As a result, non-SRO member firms and their clients are allowed a choice of independent dispute resolution service at the firm's expense, which is not the case for SRO member firms and their clients. It is our recommendation that the CSA encourage the SROs to amend their rules to reflect the more favorourable and flexible approach that the CSA has taken.

Part 14 – Handling client accounts – firms – Division 2 – Disclosure to clients

Section 14.5 – Notice to clients by non-resident registrants

We appreciate that the CSA has amended section 14.5 to exempt registered firms whose head office is in Canada from the requirement to provide the notice to clients required under section 14.5 if the registered firm has a place of business in the jurisdiction in which the client resides. However, it is our view that the CSA should consider revising section 14.5 to exempt all registered firms who have a head office in Canada from the requirement to provide a section 14.5 notice to those of its client who live in any other Canadian province or territory, regardless of whether the registered firm has a place of business in that Canadian province or territory.

Part 14 – Handling client accounts – firms – Division 5 - Account activity reporting

Section 14.14 – Reporting on each security position in the account

We agree that it is the established industry practice for mutual fund dealers and portfolio managers to report on all securities sold to them, regardless of how the securities are held. On the other hand, investment dealers typically do not report on securities held in client name. For that reason our comments will focus primarily on issues related to investment dealers.

We are of the view that client account statements should only include securities held by an investment dealer and should not include client name securities (or off book assets). While we agree that clients should have access to complete information regarding their investment portfolio, we do not believe that providing this information on a client account statement would be beneficial to a client and that, in many instances, the client may not want to have this information reported on the investment dealer's client account statement. Outlined below are our responses to the questions for which the CSA is seeking feedback regarding the recording of off book assets on investment dealers' client account statements.

1. *Investors may not be aware that securities are held in different ways or understand the implications for account reporting of holding securities in one way or another. To what extent would investors benefit from including client name securities on their account statements? For example, would including client name securities ensure that account statements provide investors with a more complete picture of their portfolio?*

The majority of an investment dealer's off book assets consist of assets held at fund manager companies. In most instances, it is the client's decision to hold securities with the fund manager/issuer as opposed to with the investment dealer for various reasons including tax reporting, creditor protection, etc. In this regard, since clients have made the choice to hold their assets with the issuer, clients may not actually

want to have their off book assets recorded on the investment dealer's client account statement. Further, the client may find it confusing to have such information included on the investment dealer's client account statement as they will already be receiving a statement from the issuer. That being said, we believe that clients should be able to choose whether they want to receive information regarding off book assets from the investment dealer and that investment dealers should have the flexibility to provide this information to a client in the form of a supplementary statement (as opposed to on a client account statement).

In 2001, IIROC issued a Member Regulation Notice clarifying the rules for investment dealers who wanted to issue consolidated statements to clients. Of particular interest is IIROC's focus on addressing potential client confusion about what types of insurance coverage (CIPF, CDIC, etc.) are applicable to the positions shown on the consolidated statement. In addition, IIROC also requires investment dealers to prominently note that the statement is not an official statement.

Given the guidance provided by IIROC in this regard and that many clients may not want their off book assets included on the investment dealer's client account statement, we believe that the CSA should not require investment dealers to include account reporting for off book assets on account statements but rather allow the client to choose if they would like to receive this information in supplementary form.

2. *If client name securities were required in account statements we would require registered firms to use IFRS to determine the fair value of client name securities. Some securities held in client name are illiquid and do not have a value that can be determined by reference to an active market. Would including the fair value of illiquid securities on account statements be useful to investors?*

We believe that including the fair value of illiquid securities on account statements would not be useful to investors as it could be difficult for an investment dealer to determine the fair value of the securities since the investment dealer may not be aware of the approach used by third-party pricing providers to assess the value.

3. *We understand that many registered firms that currently include client name securities in their account statements have arrangements with the issuer to regularly update them on the securities owned by a client. In what circumstances does this practice work? In what circumstances might this practice be impractical or unduly burdensome? How common are those circumstances?*

While fund managers provide some information to investment dealers regarding client's off book assets in the form of a Month End Reconciliation File (AM-file), fund managers would have to provide additional information to investment dealers in order for investment dealers to be able to provide the requisite information on client account statements (for example, the value of the security). In addition, only fund managers who offer funds through FundSERV provide investment dealers with the AM-file; fund managers who do not offer their funds through FundSERV do not provide this information. Further, it is very rare for any other issuer to provide investment dealers with updates regarding the securities owned by a client.

4. *Other than entering into an arrangement with the issuer, how else could registered firms collect information on what client name securities a client owns? How would these alternatives work and what costs would be involved?*

While an investment dealer could obtain information from the AM-file, as mentioned above, the AM-file does not contain all the necessary information that is required on a client account statement and not all fund managers provide investment dealers with the AM-file. The only other alternative would be for investment dealers and issuers to enter into an agreement whereby the issuer agrees to provide investment dealers with information relating to the securities owned by a client. This type of arrangement would not only be onerous for investment dealers and issuers, but we believe that it is also unnecessary as investment dealers are able to provide clients with the information they need in the form of a supplemental statement as mentioned above.

5. *What changes would registered firms need to make to their account statement procedures to include client name securities? How difficult or costly would these be?*

In order to include client name securities on account statements, we believe that investment dealers would be required to invest significant time and costs to implement the changes. It is difficult to provide an actual cost estimate since it would depend on whether the CSA would expect investment dealers to include information regarding the holdings or transaction based activity of the client name securities on account statements. In either instance, we believe that investment dealers would need more time to implement this change since it would require investment dealers to: (1) build complex systems to be able to capture information relating to off book assets on client account statements; (2) find a source to obtain data on the off book assets held by the client; and (3) identify all clients who hold off book assets.

6. *Under section 14.14, registered firms are only required to provide account statements to "clients". When do you consider a client relationship to start and end? What factors should be considered in determining whether a client relationship has ended?*

It is our view that a client's relationship with an investment dealer generally begins when the client signs an account agreement and opens an account with the investment dealer. Similarly, when the client closes their account with the investment dealer (or the account is inactive for a certain period of time and the investment dealer is unable to contact the client in accordance with unclaimed property legislation), the client's relationship with the investment dealer ends.

7. *If client name securities were required in account statements, are there any circumstances where a registered firm should be exempt from the requirement to provide reporting on client name securities? For example, should certain types of clients, investment products or transactions be exempt? Why? (We would expect to exempt client name securities held in certificate form by the client, in Delivery against Payment (DAP) accounts and in Receipt against Payment (RAP) accounts*.).

We agree with the CSA's proposal to exempt client name securities held in certificate form and in DAP and RAP accounts.

8. *If client name securities were required in account statements, should there be a transition period to give registered firms time to change their account statement procedures? How long should the transition period be?*

We believe that the transition period should be a minimum of three years. However, this timeline is based on the assumption that the CSA would not require that investment dealers record transaction based activity for client name securities on account statements. It is our view that the CSA should consider a phased-in approach if reporting client name securities becomes a requirement for investment dealers.

2. National Instrument 33-109 – *Registration Information* (NI 33-109)

Part 4 – Changes to registered individual and permitted individual information

Section 4.1(1)(b) – Notice of Change to an Individual's Information

Under section 4.1(1)(b), a registered or permitted individual is required to report a change to any information previously submitted on the Form 33-109F4 within seven (7) days of the change. It is our view that the CSA should consider extending the deadline from seven days to ten (10) business days to report material changes (for example, outside business activities, criminal disclosure, etc.) since it can take time for registered firms to review the individual's information for completeness and gather the necessary supporting documents prior to reporting the change on the National Registration Database (NRD). In addition, we would recommend that the CSA include a comment in the Companion Policy to NI 33-109 to indicate that regulators recognize that, in some instances, it may take a registered firm more time to report certain changes for a registered or permitted individual, as a result of the firm having to complete its due diligence prior to being able to submit a change on NRD.

Section 4.2 – Termination of Employment, Partnership or Agency Relationship

Under Item 5 of Form 33-109F1, question 4 requires disclosure of "any written complaints, civil claims and/or arbitration notices filed against the individual or against the firm about the individual's securities-related activities…" in the past 12 months. We note that such broad scope of question 4 is inconsistent with existing SRO reporting requirements (i.e. IIROC Rule 3100 and MFDA Policy No. 6) under which service complaints fall outside of the scope of information that registrants are required to report. It is our view that NI 33-109 should be amended to align with the applicable SRO requirements.

We would also like to suggest that Item 6 – Schedule C be expanded to include an additional section "Supervisory Type(s)" with the following choices:

- Supervisor of Approved Persons
  - specify type(s) of approved persons under supervision (RRs, IRs, Supervisors)
  - specify type(s) of product that approved persons under supervision are dealing in (securities, futures, options, portfolio management, N/A)
  - specify type(s) of client that approved persons under supervision are authorized to deal with
- Opening of New Accounts, Account Activity, Discretionary Accounts, Managed Accounts, Options Accounts, Futures Contracts Accounts, Advertising, Sales Literature and Correspondence, Research Reports and Other [text box]

The inclusion of the above mentioned choices would provide consistency between IIROC's approval categories and the CSA's approval categories.

CONCLUDING REMARKS

Thank you for providing us with the opportunity to provide our comments. We would be pleased to discuss our comments further with you. If you have any questions or require further information, please do not hesitate to contact the undersigned.

Yours sincerely,

"Julie Badurina"
Associate Director, Wealth Management and Capital Markets Compliance

cc: David Lang, Chief Compliance Officer, RBC Dominion Securities Inc. (Institutional)
Shaine Pollock, Head, Capital Markets Compliance, RBC Dominion Securities Inc.
Russell Purre, Chief Compliance Officer, RBC Dominion Securities Inc. (Retail)
Ann David, Chief Compliance Officer, Royal Mutual Funds Inc.
Greg Nowakowski, Chief Compliance Officer, Commission Direct Inc. and RBC Directing Investing Inc. (pending regulatory approval)
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