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January 13, 2011

VIA E-MAIL

British Columbia Securities Commission
Alberta Securities Commission
Saskatchewan Financial Services Commission
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
New Brunswick Securities Commission
Registrar of Securities, Prince Edward Island
Nova Scotia Securities Commission
Superintendent of Securities, Newfoundland and Labrador
Registrar of Securities, Northwest Territories
Superintendent of Securities, Yukon Territory
Registrar of Securities, Nunavut

Mr. John Stevenson, Secretary
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M^{e} Anne-Marie Beaudoin
Corporate Secretary
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Email: consultation-en-cours@lautorite.qc.ca

Dear Sirs/Mesdames:

Re: Proposed Amendments to National Instrument 31-103 Registration Requirements and Exemptions ("NI 31-103") – Proposed Exemptions from Investment Fund Manager Registration Requirement for International and Certain Domestic Investment Fund Managers

We are writing in response to the request for comments on the proposed amendments in respect of the proposed exemptions from the investment fund manager registration requirements for international and certain domestic investment fund managers (the "**Proposed Amendments**"). Thank you for providing us with an opportunity to provide comments on the Proposed Amendments.

Invesco Trimark Ltd. ("**Invesco Trimark**") is a wholly-owned subsidiary of Invesco Ltd., a global asset management firm with over USD $604.5 billion in assets under management as of September 30, 2010, with substantial retail and institutional managed assets in Canada.

We are writing on our own behalf, as well as behalf of our affiliates. Affiliates of Invesco Trimark carry out investment fund management activities from outside of Canada and may, from time to time, make investment funds available for purchase to eligible Canadian investors.

A. Thresholds Applicable to International Investment Fund Managers

We agree that international investment fund managers who deal with other than permitted clients should be subject to registration in Canada. Accordingly, we support the drafting of the basic exemption set out in proposed subsections 8.29.1(2) and 8.29.1(3) of NI 31-103. However, we do not agree with the additional conditions set out in section 8.29.1(4), namely, the two proposed thresholds (the "**Proposed Thresholds**") that must not be crossed at the end of the international investment fund manager's most recently completed financial year end:

- The fair value of the assets of any investment fund for which it acts as investment fund manager attributable to Canadian securityholders is not more than 10% of the fair value of all the assets of such fund
- The fair value of the assets of all funds managed by the investment fund manager attributable to Canadian securityholders is not more than $50 million

We have the following specific comments which we will discuss in further detail in our comment letter:

1. It is our view that the Proposed Thresholds do not address the risks previously identified by the Canadian Securities Administrators ("**CSA**") in a coherent manner, and therefore the intended benefits will not be realized.
2. There is no rational basis for the differing registration requirements in similar situations that arise under the Proposed Threshold.
3. Financial and opportunity costs will be imposed on both international investment fund managers and Canadian permitted client investors. These costs will far exceed any benefits that may arise from the Proposed Thresholds.
4. The Proposed Thresholds are not consistent with the conditions for either the international dealer exemption or international adviser exemption.
5. Money market funds are currently captured in the calculation of the Proposed Thresholds. We believe that they should be excluded.

We acknowledge that the Proposed Thresholds as currently drafted apply only at the end of the recently completed financial year, rather than on a continuous basis. As a practical matter, we believe that the fact that the test is a once a year test will not address or ameliorate the concerns that we are expressing in this comment letter.

1. ***Desired Benefits Will Not Be Realized***

In a notice dated February 20, 2007 regarding the then-proposed NI 31-103, the CSA identified the following risks (the "**Identified Risks**") as being particular to the management of an investment fund:

- Incorrect or untimely calculation of net asset value
- Incorrect or untimely preparation of financial statements and reports
- Incorrect or untimely provision of transfer agency or record-keeping services
- Conflicts of interest between the fund manager and its investors

The CSA cited these Identified Risks again in its notice dated October 15, 2010 regarding the Proposed Amendments, and stated that these risks concerned investors regardless of where the investment fund manager is located. If the Identified Risks are the drivers behind the introduction of the new registration requirements for international investment fund managers, then this registration requirement must be evaluated based on the extent to which it will reduce the Identified Risks. In our view, the registration requirement contained in the Proposed Amendments will not reduce these risks.

The simple act of registration does nothing to address the first three Identified Risks noted above as these are items regulated at the product level and the products in question would typically not be subject to product regulation. Furthermore, these issues are typically addressed in the documentation establishing the investment product and, in the case of permitted clients, are often negotiated. We know of no instances where there have been issues with permitted clients over NAV calculations, financial performance or record-keeping. As such, the only Identified Risk addressed by the Proposed Amendments relates to conflicts of interest and this can be addressed less intrusively. For example, the Proposed Amendments can be re-written to state that regardless of registration status, the conflict of interest provisions under NI 31-103 apply to any market intermediary operating in Canadian capital markets.

2. ***No Rational Basis for the Thresholds***

We do not believe that there is a rational basis for the different results that would arise under the Proposed Thresholds. It is not clear why the same permitted client would require the "protection" afforded by investment fund manager registration if the fund NAV is $51 million but not if the fund NAV is $49 million. We do not believe that permitted clients need these protections in any event. The $50 million threshold is wholly arbitrary and artificially low such that it renders the exemption somewhat meaningless. The basis for designating a client as a permitted client is because they do not need the protections that other investors require. In exchange for this simplified regime, those investors are typically able to access investment products at a lower cost. If the CSA is determined to have thresholds in a permitted client situation, then we would urge such thresholds to be much higher, in the range of $2 billion, to reflect the additional theoretical risks imposed on the financial system in those cases.

We would ask that the following hypothetical scenarios be considered. Each of these scenarios involves an adviser and international investment fund manager that manages an international equity pool with $500 million in assets. At the start, this hypothetical

investment fund manager does not have any Canadian investors in any pooled funds managed by it.

1) One or more Canadian pension funds invests an aggregate of $51 million in the $500 million international equity pool at the end of the investment fund manager's financial year. Under the Proposed Amendments, the international fund manager would be required to register as an investment fund manager as it managed more than $50 million attributable to Canadian securityholders.

2) One or more Canadian pension funds invests an aggregate of $49 million in the $500 million international equity pool. Neither of the two thresholds is crossed, therefore, the international fund manager could be eligible for the exemption, provided it met the other conditions.

We do not believe that there is any meaningful basis for the difference in the registration obligations that would be imposed on the international investment fund manager in the scenarios set out above. The Identified Risks are not any greater in those scenarios where an international investment fund manager has crossed a Proposed Threshold and therefore no longer qualifies for the exemption from registration than in those situations where an international investment fund manager is within the Proposed Thresholds.

We also note that it would not be uncommon for one Canadian permitted client, on its own, to invest more than $50 million. Under the Proposed Amendments, an international investment fund manager with such a client in a pooled vehicle would not be eligible for the exemption from registration as an investment fund manager. We respectfully submit that the Identified Risks are not particularly relevant for such a client, and we are struggling to understand why registration of an international investment fund manager should be required under these circumstances.

3. ***Costs Outweigh the Benefits***

Not only do we believe that there are no real benefits to be gained from adopting the Proposed Thresholds, but we also believe that the costs associated with the Proposed Thresholds will be significant.

Financial and opportunity costs will be imposed on both international investment fund managers and Canadian permitted client investors and would far exceed any negligible benefits that would result from using the Proposed Thresholds to determine eligibility for exemption from registration.

Incremental costs likely to be incurred by the investment fund manager include:

- registration and filing fees paid to regulators
- time incurred by employees and external legal advisers in maintaining registrations and fulfilling ongoing Canadian regulatory requirements
- changing existing financial arrangements to meet Canadian working capital requirements
- changing existing insurance/bonding coverage to meet Canadian regulatory requirements

Of even greater significance, in our view, is the potential negative impact on Canadian permitted clients – the very clients the Proposed Amendments are intended to help. We believe the Proposed Amendments and, in particular, the Proposed Thresholds will likely have the following detrimental impact on Canadian permitted clients:

- the imposition by investment fund managers of contractual rights to require redemption of securities
- fewer investment funds to select from, and less competition amongst investment fund managers, with a likely reduction or slowdown in product innovation and increase in management fees as some foreign investment fund managers choose to limit their Canadian business or exit the Canadian marketplace altogether
- an incentive for international investment fund managers to offer separately managed accounts, in place of pooled investment vehicles, even where pooled investment vehicles may be a more cost effective solution for a particular client

We would like to expand on what we believe will be the detrimental impact on Canadian permitted clients.

a. *Contract Rights to Require Redemption*

The CSA specifically invited comments on the calculations required to monitor the Proposed Thresholds. We are of the view that the focus should be not on how the Proposed Thresholds will be monitored, but on how an investment fund manager would respond if a Proposed Threshold is crossed.

If an international fund manager wanted to offer its products to Canadian investors without being required itself to register, it could only ensure that result if it were able to force redemptions by Canadian investors to ensure the thresholds remain satisfied. We believe this would make any such product unattractive for Canadian permitted clients such that they would simply not make investments with these fund managers. We do not believe that is the desired effect of the Proposed Amendments.

Under what we believe is the likely response to the Proposed Thresholds, both international investment fund managers and Canadian permitted clients would be worse off.

b. *Fewer Options, Less Competition and Innovation, Higher Management Fees*

International fund managers may decide not to make their investment funds available in the Canadian marketplace given the conditions of doing business and qualifying for exemption from registration as an investment fund manager. Canadian permitted clients who currently have access to investment fund products offered by international investment fund managers who are not registered as such with the Canadian regulators may have fewer investment fund options available to them as a consequence of the Proposed Amendments.

Fewer international investment fund managers means less competition for domestic investment fund managers who cater to permitted clients, which may lead to slower or less product innovation and higher management fees than might otherwise be charged to permitted clients.

4. ***Inconsistent with Other Exemptions***

We respectfully submit that the Proposed Thresholds are not appropriate as they are not consistent with the conditions required for the international dealer exemption.

An international fund manager making its funds available for purchase by a Canadian investor will be acting as the dealer (and thus either a registered dealer under NI 31-103, or exempt from registration) or making trades available through another entity who acts as the dealer (who would itself either be registered as a dealer or exempt from registration).

Many international fund managers making their funds available to Canadian investors will look to the international dealer exemption in section 8.18. The CSA chose not to impose any dollar or percentage thresholds as a condition for the availability of this exemption, focusing instead on other conditions, such as the type of security and the type of client. We believe a similar approach is appropriate for international investment fund managers.

We note that the international adviser exemption in section 8.26 of NI 31-103 uses a threshold of 10% of aggregate consolidated gross revenues from portfolio management activities. While we are of the view that it is most appropriate to use the same approach as that taken for the international dealer exemption, and not apply any dollar or percentage thresholds, we believe that the threshold used for the international adviser exemption is preferable to the Proposed Thresholds as it is fairer to those relying on the exemption than the Proposed Thresholds in that the threshold used for the international adviser exemption is less likely to suddenly change a party's eligibility for exemption from registration.

5. ***Money Market Funds***

As at December 31, 2010, Invesco Trimark affiliates currently manage approximately USD $60 million in assets attributable to Canadian securityholders in money market funds that are domiciled outside of Canada.

As stated above, we believe that where only permitted clients are investing in an investment fund, no dollar or percentage thresholds are appropriate as a condition of qualifying for a exemption from registration; however, to the extent that the CSA disagrees and concludes that some dollar or percentage thresholds are appropriate, we suggest that investments in money market funds be excluded from the calculation of the Proposed Thresholds. While we do not accept that the Proposed Thresholds will reduce the Identified Risks, we believe that the Identified Risks are even less relevant in the context of money market funds purchased by permitted clients.

If money market funds are not excluded from any thresholds that apply to the availability of the exemption from registration as an international investment fund manager, we believe that Canadian permitted clients would have greatly reduced access to money market funds. Money market products are a high volume, low margin global business for investment fund managers. To the extent there is an increase in the costs and regulatory burdens associated with offering such products to Canadian permitted clients, we believe that many global investment fund managers will choose not to offer these products in the Canadian marketplace.

Given the lower risk profile associated with money market funds, Canadian permitted clients should not be unduly restricted in their efforts to obtain the best returns available globally on their money market investments.

B. Domestic Investment Fund Managers

A domestic investment fund manager is currently required to register as an investment fund manager only in the jurisdiction in which it has its head office. Section 8.29.2 contemplates the registration of domestic investment fund managers in jurisdictions other than its principal jurisdiction in certain circumstances. As a result of this proposed provision, many domestic investment fund managers will be required to register across Canada as investment fund managers. It is our view that this is an excessive requirement, and we do not believe that adding this additional layer of regulation will reduce the Identified Risks in any way.

Is section 8.29.2 intended to place an investment fund manager under the jurisdiction of the securities regulatory authorities in each of the relevant local jurisdictions? If this is the case, we believe that there are less intrusive ways in which to achieve this goal than by requiring additional registrations. We would suggest that as an alternative to registration, investment fund managers could complete a form similar to Form 31-103F2 Submission to Jurisdiction and Appointment of Agent for Service for each of the relevant jurisdictions.

Given the great progress that has been made in the harmonization of the registration regime across Canada under NI 31-103, we submit that the additional financial and administrative burdens associated with requiring domestic investment fund managers to register in multiple jurisdictions in Canada are not justified. By way of comparison with corporate law requirements, we note that the *Extra Provincial Corporations Act* (Ontario) requires only foreign corporations to obtain a license to carry on business in Canada and to appoint an agent for service in Ontario. These requirements are not imposed on corporations incorporated or continued under the laws of a province other than Ontario or federally.

C. Notices to Securityholders

Proposed section 14.5.1 requires registered investment fund managers to provide to securityholders of each of the funds managed by it in each local jurisdiction in which it does not have a physical place of business a statement in writing disclosing certain information, namely,

- the non-resident status of the investment fund manager in the local jurisdiction
- the investment fund manager's jurisdiction of residence
- the name and address of the agent for service of process of the investment fund manager in the local jurisdiction
- the nature of risks to securityholders that legal rights may not be enforceable in the local jurisdiction.

Similar notices are required to be provided by those parties who are relying on the international adviser exemption in section 8.26 or the international dealer exemption in section 8.18. We respectfully submit that while these types of notices may be appropriate where a party provides services or products from outside of Canada, they are not

appropriate where the services are being provided from within Canada and would not, as a practical matter, enhance investor protection or investor disclosure in a meaningful way.

There may be technical procedural differences between how an Ontario-resident securityholder would proceed to enforce its rights against an Ontario-resident investment fund manager and how that Ontario-resident securityholder would proceed to enforce its rights against an Alberta-resident investment fund manager; however, as a practical matter, we believe that the barriers faced by a Canadian investor pursuing remedies within his or her province or territory of residence are not substantially different from those that investor would face if it were pursing remedies in a different province or territory of Canada. We do not believe that investors are prejudiced by their current lack of this notice, and do not believe that requiring this notice enhances their position or knowledge.

The notice required by the Proposed Amendment would impose an unnecessary expense on investment fund managers without a commensurate benefit.

If the CSA is of the view that this disclosure should be made, we suggest that rather than a notice that is sent to each securityholder, a general notice in a prospectus (where an investment fund is a reporting issuer) or in a client statement (where an investment fund is not a reporting issuer) would be more appropriate.

We appreciate the opportunity to comment on the Proposed Amendments and would be pleased to discuss our comments with you in person at any time.

Yours very truly,

Invesco Trimark Ltd.

Eric J. Adelson
Senior Vice President, Legal