BLACKROCK

January 13, 2011

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

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Me Anne-Marie Beaudoin
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Dear Sirs/Mesdames:

Request for Comment (the Request) on Proposed Amendments (the Amendments) to National Instrument 31-103 – *Registration Requirements and Exemptions* (NI 31-103) and Companion Policy 31-103 CP – *Registration Requirements and Exemptions* (CP 31-103)

BlackRock, Inc. (**BlackRock**) is pleased to respond on behalf of its affiliates that are international investment fund managers (**IIFMs**) to the Request related to the Amendments to NI 31-103 and CP 31-103 in respect of the registration of IIFMs.

A. Background

BlackRock is a premier provider of global investment management, risk management and advisory services to institutional, intermediary and individual investors around the world. BlackRock's clients can access investment solutions through a variety of product structures, including individual and institutional separate accounts, mutual funds and other pooled investment vehicles and the industry-leading iShares® exchange-traded funds.

BlackRock manages assets for clients in North America and South America, Europe, the Middle East, Africa, Asia and Australia. The firm employs more than 8,900 individuals and maintains offices in 24 countries around the world. BlackRock's client base includes corporate, public, union and industry pension plans; governments; insurance companies; third-party mutual funds; endowments; foundations; charities; corporations; official institutions; sovereign wealth funds; banks; financial professionals; and individuals worldwide.

As of September 30, 2010, BlackRock's assets under management total US $3.446 trillion across equity, fixed income, cash management, alternative investment, real estate and advisory strategies.

BlackRock's activities are subject to significant oversight by various regulatory agencies including, but not limited to, the Securities and Exchange Commission (**SEC**), the Commodity Futures Trading Commission, the Office of the Comptroller of the Currency, the Federal Reserve Board, the United States Department of Labor, the United Kingdom Financial Services Authority, the Ontario Securities Commission, the Australian Securities and Investments Commission, the Financial Services Agency in Japan and the Hong Kong Securities and Futures Commission.

In Canada, BlackRock Asset Management Canada Limited is registered as a portfolio manager, investment fund manager and exempt market dealer in all the jurisdictions of Canada and as a commodity trading manager in Ontario. Other non-resident affiliates of BlackRock rely on the international adviser or international dealer exemptions to deal with Canadian clients.

Affiliates of BlackRock that are IIFMs could be affected by the Amendments in respect of the following types of international investment funds (**IIFs**) for which they carry out investment fund management activities:

(i) investment funds that are traded on an exchange (**ETFs**) in the United States, the United Kingdom, or one of 15 other countries in the world, and that are subject to regulation by such countries and exchanges; the

securities of ETFs may be purchased by Canadian investors on the exchange or in a private placement;

(ii) investment funds that are funds that are not listed on an exchange (**Mutual Funds**) established as corporations or limited partnerships under the laws of a non-Canadian jurisdiction and managed by their board of directors, a general partner or another entity which are, or a majority of their members are, independent of BlackRock. These entities may be separate from the BlackRock affiliate that acts primarily as an international adviser and may, for purposes of NI 31-103, be considered the investment fund manager. Mutual Funds may be registered with the SEC under the *Investment Companies Act of 1940*, Undertakings for Collective Investments (**UCITS**) under European Union regulations or other heavily regulated investment funds in their home jurisdiction. The securities of Mutual Funds are qualified for public distribution under a prospectus or similar offering document in one or more non-Canadian jurisdictions and may be purchased by Canadian investors in a private placement;

(iii) investment funds that are collective trust funds or common trust funds (**CTFs**) of which the affiliate is a limited purpose trust company subject to regulation as such in the United States through the Office of the Comptroller of the Currency, the agency of the U.S. Treasury Department that regulates United States national banks; national banks are authorized to commingle the assets of their fiduciary accounts in CTFs and securities of CTFs may be purchased by Canadian investors in a private placement; and

(iv) investment funds that are pooled funds (**Pooled Funds**), which include investment funds considered hedge funds or private equity funds, established as trusts, corporations, limited partnerships or limited liability companies under the laws of a non-Canadian jurisdiction and managed by their trustees, board of directors, general partner or managing member. Trustees and boards of directors (or a majority of their members) are generally independent of BlackRock and general partners or managing members may be either affiliates of BlackRock or independent. The managing entities are generally legally separate bodies or entities from the BlackRock affiliate that they engage to act as the investment adviser. Depending on the circumstances, the managing entity or the adviser, may, for the purposes of NI 31-103, be considered the investment fund manager. The securities of Pooled Funds are not generally qualified for public distribution in non-Canadian jurisdictions and may be purchased by Canadian investors in a private placement.

In many jurisdictions the IIFM of ETFs, Mutual Funds, CTFs and Pooled Funds or the management activities of the IIFM are currently or will soon be subject to significant oversight and regulation.

Securities of the IIFs are acquired by Canadian investors through a register dealer or a dealer that is exempt from registration. The adviser of an IIF is, in respect of its advice to the IIF, not subject to registration as an adviser in Canada.

B. Application of the Amendments

1. The Amendments introduce an exemption (the **IIFM Exemption**) from the investment fund manager registration requirement for IIFMs that submit a Form 31-103F2, subject to certain conditions. BlackRock has the following comments on certain of the conditions of this exemption which are based on a consideration of the application of the conditions to the investment fund management activities described above:

   (i) **the condition that requires that all of the securities of the IIF were distributed to "permitted clients" under an exemption from the prospectus requirement.**

   There are exemptions from the prospectus requirement that do not require that the purchaser be a "permitted client". While an international dealer relying on the international dealer exemption from the dealer registration requirement may only distribute to "permitted clients", registered exempt market dealers and investment dealers are not so restricted. In order to avoid confusion, the dealer registration requirement and exemptions therefrom, and not the IIFM Exemption, should determine to whom securities can be distributed and the IIFM Exemption should not be conditional on the purchasers being "permitted clients" as long as the distribution is made under an exemption from the prospectus requirement. If this condition is to remain restricted in this way, the requirement that securities were distributed only to "permitted clients" should only apply to securities distributed after the Amendments come into effect, since some investors prior to this time may not have been "permitted clients", although they all would have purchased under a prospectus exemption.

   (ii) **the condition that not more than 10% of the fair value of the assets of any IIF managed by the IIFM be attributable to securities owned by Canadian residents.**

   There should be no per fund threshold.

   In the case of ETFs, it will not be possible to monitor the threshold because the IIFM is not aware of the underlying beneficial ownership of securities listed on an exchange. As discussed below, it is BlackRock's submission that the IIFM of an ETF should in all circumstances be entitled to rely on the No Solicitation Exemption described below but if it can not, in some circumstances, rely on the No Solicitation Exemption it should not be subject to any conditions at a per fund level or at the IIFM level, due to these monitoring difficulties and for the additional reasons set out below, in order to be entitled to rely on the IIFM Exemption.

In the case of Pooled Funds, it is current market practice in many situations for an IIFM to establish a Pooled Fund in response to a request from a large institutional investor, including a Canadian investor, and such investor may for a significant period of time be the only investor in the Pooled Fund. Further, in an existing CTF, Pooled Fund or Mutual Fund, a Canadian investor could hold a significant investment that would be greater than 10%. This could be the result of a large investment by a Canadian investor or due to a redemption by a non-Canadian investor.

With respect to certain Pooled Funds which may have multiple closings, the 10% threshold also creates monitoring issues and could affect the rights of Canadian investors. The timing of an investment by a Canadian investor would have to be determined on a basis that would avoid the threshold and transfers to Canadian investors might not be approved if the result were to trigger the requirement for the IIFM to register. These arrangements might be contrary to the interests of Canadian investors.

With respect to Pooled Funds, Mutual Funds and CTFs, the 10% threshold thus creates difficult monitoring issues in determining whether the threshold has been met. It is submitted that this creates a significant and unnecessary regulatory burden on the IIFM. In all of these circumstances, BlackRock submits that the IIFM should be entitled to rely on the IIFM Exemption unless the threshold proposed in paragraph B.1(iii) below is exceeded.

BlackRock submits that for the foregoing reasons this condition is not in the interests of Canadian investors since it may deny them access to investments in IIFs that are consistent with achieving their investment objectives.

(iii) **the condition that the fair value of the assets of all IIFs managed by the IIFM attributable to securities owned by Canadian residents is not more than $50 million.**

With the exception of the IIFM of an ETF which should not be subject to any conditions at a per fund or at the IIFM level in order to be able to rely on the IIFM Exemption, BlackRock agrees that only IIFMs that do not conduct a significant portion of their activities in Canada should be able to rely on the IIFM Exemption. It is submitted that there should be a threshold at the IIFM level for reliance on the IIFM Exemption but it should not be a particular dollar amount.

The aggregate $50 million per IIFM threshold will, effectively, require the majority of the BlackRock affiliates that manage IIFs that currently have Canadian investors to register even though such affiliates do not carry on a significant portion of their activities in Canada. BlackRock expects that, in addition to BlackRock affiliates, this would be the same for the vast majority of IIFMs, since an aggregate of $50 million would generally be

too low an asset base to warrant the costs associated with offering IIFs to Canadian investors. Further, for many large Canadian institutional investors, a $50 million investment may be below their threshold for an individual investment in an IIF.

BlackRock submits that this condition, like the per fund condition, is not in the interests of Canadian investors if it denies them access to investments in IIFs that are consistent with achieving their investment objectives.

Accordingly, BlackRock is proposing that the IIFM Exemption would not be available to an IIFM, other than the IIFM of an ETF, if, for all IIFs, other than ETFs, for which an IIFM and its affiliates act as an investment fund manager, the fair value of the assets of such IIFs attributable to securities owned by residents of Canada is more than 10% of the fair value of all of the assets of all of such IIFs, in each case determined as at December 31 of the preceding calendar year. BlackRock submits that such a threshold will accomplish the regulatory objectives of ensuring that unregulated IIFMs do not conduct a significant portion of their activities in Canada and will not be overly burdensome to calculate given that fair value (net asset value) calculations are routinely made.

The result of such a threshold is that an IIFM that cannot rely on the No Solicitation Exemption with respect to any IIFs that are distributed in Canada will be able to file the Form 31-103F2 and rely on the IIFM Exemption until such time as Canada constitutes a significant portion of the business of the IIFM and its affiliates.

Reliance on the IIFM Exemption is critical for such IIFMs because of the difficulties associated with registering as an investment fund manager which are discussed in Section C below.

2. In summary, it is BlackRock's submission on behalf of its affiliates in respect of the IIFM Exemption that:

   (i) the condition that the IIFM Exemption can only be relied upon if securities of the IIF were only distributed to "permitted clients" be amended to contemplate other distributions under an exemption from the prospectus requirement;

   (ii) the condition that the IIFM Exemption cannot be relied upon by any IIFM if the per fund threshold is exceeded be removed; and

   (iii) the condition that the IIFM Exemption cannot be relied upon if the $50 million threshold is exceeded be amended to provide that the IIFM Exemption cannot be relied upon by an IIFM, other than the IIFM of an ETF, if a threshold of 10% of the fair value of the assets of all IIFs, other than ETFs, managed by the IIFM and its affiliates, determined as at December 31 of the preceding calendar year, is exceeded.

3. The Amendments also introduce an exemption (the **No Solicitation Exemption**) from the investment fund manager registration requirement for IIFMs that meet certain conditions. BlackRock's comments on the conditions relate to the following:

(i) **the condition that neither the investment fund manager nor the investment fund has, after September 28, 2011, actively solicited Canadian residents and the discussion of the meaning of "active solicitation" in CP 31-103.**

CP 31-103 indicates that "active solicitation" refers to intentional actions taken by the investment fund or the investment fund manager to encourage a purchase and includes direct communication with residents of the jurisdiction to encourage their purchases of the fund's securities.

There are circumstances in which representatives of a qualified distributor of an ETF are in communication with an institutional investor or a registered dealer or a registered adviser in respect of securities of an ETF. Since the guidance in CP 31-103 in respect of "active solicitation" is initially described very broadly as "intentional actions" to encourage a purchase and the examples given are inclusive but not determinative, BlackRock proposes that direct communication by those who may be authorized to distribute an ETF be clearly excluded from the concept of "active solicitation" by the investment fund or the investment fund manager if the investment fund or the investment fund manager itself is not in direct communication to encourage a purchase.

Further, the investment fund manager of an ETF may receive requests for information from an investor or potential investor that holds or is considering acquiring the securities of an ETF. It should also be clarified that such communications will not be considered to be for the purposes of encouraging a purchase.

BlackRock also proposes that the definition of "active solicitation" should clearly exclude transactions by third parties in securities of ETFs that were not created solely for Canadian investors. It is submitted that such IIFs, being subject to regulation by other countries and the exchanges on which they are listed, should clearly be available to Canadian investors without a requirement that their IIFM be subject to registration or to the conditions of the IIFM Exemption.

(ii) **the request for comment from Ontario and Quebec regarding the imposition of a per fund threshold and a $50 million threshold similar to those in the IIFM Exemption into the No-Solicitation Exemption.**

BlackRock submits that, due to the broad interpretation of the concept of solicitation, the No-Solicitation Exemption will be available to very few IIFMs in any event and imposing these additional conditions, even if they are amended as BlackRock has proposed, is unnecessary.

4. The Amendments do not provide an exemption from the investment fund manager registration requirement for IIFMs that are subject to regulation in another jurisdiction. In addition to the comments on the IIFM Exemption and the No Solicitation Exemption which BlackRock has provided above, BlackRock also proposes that the Amendments be revised to exempt from the investment fund manager registration requirement an IIFM that is subject to regulation in any jurisdiction that is a member of the G-20 group of countries or is otherwise recognized by the Canadian Securities Administrators (**CSA**) provided that the IIFM does not have a physical place of business in Canada and that the securities of the IIFs it manages are distributed under an exemption from the prospectus requirement.

   BlackRock submits that such an exemption is appropriate because it will recognize that to the extent that an IIFM is subject to regulation and oversight by a regulator in such a jurisdiction, registration with and oversight by one or more members of the CSA is not necessary and is duplicative. Such an exemption will also be consistent with the approach to regulation taken by other members of the G-20 and will reduce the regulatory burden that would otherwise be imposed on IIFMs that have investors in several jurisdictions, including Canada.

   BlackRock also submits that such an exemption is appropriate because, in the case of IIFMs that are so regulated but that cannot rely on the IIFM Exemption or the No Solicitation Exemption, there would be no additional benefits to Canadian investors that would warrant the additional costs associated with registration.

C. Compliance with the Registration Requirements

An IIFM that cannot rely on the IIFM Exemption, the No Solicitation Exemption or the additional exemption which BlackRock strongly proposes, must register as an investment fund manager. There are no exemptions for IIFMs from any of the registration requirements and BlackRock identified certain problems that IIFMs would have in complying with such requirements:

(i) **the requirement that an IIFM must have a chief compliance officer (CCO) that meets the prescribed proficiency and experience requirements.**

In all likelihood, IIFMs will have established compliance regimes that are not based on Canadian law. As drafted, the requirement for registration is triggered at a very low level of Canadian participation. BlackRock submits that the CCO of most IIFMs (even those IIFMs that are required by the legislation of their home jurisdiction to have a CCO) will not meet any of the proficiency options for a CCO since he/she will not have taken the Canadian Securities Course Exam, the PDO Exam or the Canadian Investment Funds in Canada Course Exam. Further, the CCO may not have the specified experience or qualify as the CCO of a portfolio manager.

Further, it will be difficult for the CCO of an IIFM to demonstrate experience that is compliant because he/she is unlikely to have worked at a registered dealer or a registered adviser (since these must be Canadian registrants) and he/she is therefore given fewer options than a Canadian CCO of acceptable experience.

Accordingly, in virtually all cases the IIFM will be required to request relief from such requirements.

Since the securities of IIFs are offered on a private placement basis and the IIFs are not themselves regulated under Canadian law, requiring the CCO of an IIFM to comply with the same requirements as a Canadian investment fund manager is not necessary.

BlackRock proposes that the CCO of an IIFM not be subject to these requirements and that Canadian investors in such IIFs receive appropriate disclosure that this is the case.

(ii) **the annual audited and quarterly unaudited unconsolidated financial statement reporting obligations**.

BlackRock affiliates that are IIFMs do not prepare their financial statements in accordance with Canadian GAAP, as required under section 3.1 of National Instrument 52-107 – *Acceptable Accounting Principles, Auditing Standards and Reporting Currency*. Complying with the financial statement reporting obligations will be costly and should not be required for those who restrict their activities to the management of IIFs which are offered on a private placement basis and not themselves regulated under Canadian Law.

BlackRock submits that IIFMs be permitted to comply with their financial reporting requirements by complying with Canadian or U.S. GAAP or with IFRS.

(iii) **the requirement that a UDP and CCO must do certain things.**

It is not clear that in the case of an IIFM the responsibilities of a UDP and a CCO set out in Part 5 of NI 31-103 relate to the activities of the IIFM in Canada. BlackRock proposes that it should not be the case that the non-Canadian activities of an IIFM are regulated by NI 31-103 and that such result should be clear in NI 31-103.

(iv) **the requirement relating to insurance**.

A Canadian registered IIFM will be required to obtain separate fidelity bonds to cover the Canadian resident investor assets managed by each of them. BlackRock's preferred approach is to provide coverage for its Canadian registered investment fund managers, both domestic and international, under its global fidelity bond covering BlackRock. We

understand that this is the industry standard approach to maintaining fidelity bonds, and provides for a larger per claim coverage amount and diversification of the covered pool.

Based on the number of separate BlackRock Canadian registered IIFMs and domestic investment fund managers, compliance with the requirement will require BlackRock to purchase significant additional fidelity bond limits. Accordingly, we believe there may not be sufficient capacity available in the marketplace for BlackRock, due to the number of insurers already committing their maximum available limit on BlackRock's global fidelity bond program, to comply with the requirement.

Should a global fidelity bond not be acceptable to members of the CSA, BlackRock recommends as an alternative approach that one separate bond for all Canadian registered investment fund managers that are wholly owned subsidiaries of one parent entity be acceptable and that the bond be written on a Financial Institution Form 14, Investment Company Blanket Bond or other form offering comparable coverage.

BlackRock appreciates the opportunity to make these comments and would be pleased to make appropriate BlackRock representatives available to discuss any of these comments with you.

Yours very truly,

BlackRock, Inc.

Margaret Gunawan
Director
Legal and Compliance