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

Comments on proposals to amend National Instrument 31-103 *Registration Requirements and Exemptions* (NI 31-103 or the Rule) and Companion Policy 31-103 CP *Registration Requirements and Exemptions* (the Companion Policy).

To all Canadian securities administrators

I represent a small firm with a stable retail business and a growing corporate finance practice; these proposals to amend National Instrument 31-103 and Companion Policy 31-103 CP ("the proposals") will require a significant investment of time and money on our part. I can't be certain of whether it will have a positive, negative or no effect on our business over the medium and long term. Some in our firm cynically believe that this is in aid of the Banks consolidating their hold on the industry by driving smaller independent firms out of business. I don't believe that this is the motivation for the proposals, but share a concern that this will be the effect.

As we are a small firm, I wouldn't expect my comments to materially alter the proposals, unless they were aligned with a significant number of comments from other participants. Thus my comments will be more general in nature. Embedded in what is written here, are philosophical questions about the role of regulation in our industry and in our society. You may interpret this to be arguing for a much reduced role: that is however, not my intention. Rather I raise a question of movement or direction – where is this taking the industry? I do not propose a libertarian approach, but caution against over regulation. It is important to ask who has the responsibility to protect investors – the regulator or the investor themselves. It is a grey area, but in terms of long term direction, should this be increasingly the investor or the

regulator? Perhaps the effect of these proposals will move more toward the investor over time, but is this the best method and what will be the cost, both in terms of accounting cost and opportunity cost?

It is difficult to argue with the disclosure requirement particularly with regard to conflicts of interests: the need for this disclosure is self-evident, as it is information which investors would have little or no opportunity to obtain elsewhere. This is in contrast with the performance reporting requirements. We provide our customers with sufficient information to determine the performance of individual investments and the overall performance of the account. Some of our customers engage accountants to help them with this, as many hold equities that were previously income trusts – thus the calculation of adjusted cost base is complicated. Given that we are a transaction based firm (vs. fee based) – i.e. we only receive a commission to buy the security - is it unfair to ask the customers to do some of the work themselves? It might be advisable for us to move to a fee based model: to retain customers we would then have to provide much better reporting, along the lines set out in the proposals. This is question of business strategy and profitability: however these proposals make it a regulatory requirement which will require an investment of time and money.

Another basic concern is the focus of this regulatory initiative in light of the overall health of financial markets and the economy in general. This is a major proposal requiring a great deal of effort by regulators and investment dealers. In light of the significant investment losses incurred in the last 12 years – the tech bubble, the financial crisis in 2008 – many investors call for better regulation. I think it is fair to ask how you see these proposals address some of the systemic issues that gave rise to those losses or the ongoing volatility going forward. After the tech bubble crash and the string of accounting scandals, governments and regulators forced public companies and the accounting profession to adopt new detailed rules around financial reporting. Did these help address the underlying causes of the tech bubble, or help alleviate the financial crisis of 2008? There was a lot of concern about asset backed securities in the wake of losses due to sub-prime mortgages. Did anyone ask why institutional investors such as French Pension funds were investing in US real estate in 2005 and 2006, a time when US real estate values had in many cities doubled in the previous four years? Could better performance reporting have help avert the herd-like buying of Nortel stock in 1999 and early 2000? (Please forgive me for being rhetorical). In both instances, there were independent voices raising concerns about the inherent value of the underlying assets, before the losses occurred, underscoring the importance of investment advice.

The proposals focus on the needs of the investor and the relationship to the investment advisor. Currently there are clear rules to discourage and penalize abuse by the advisor: the proposals around conflicts of interest strengthen this regime. This increased focus on improved disclosure and performance reporting to the investor is understandable, however it will undoubtedly have unintended consequences and doesn't consider the other parts of the picture. Capital, by its nature, needs to be invested, and where and how capital is invested will have a significant impact on the future of our economy and society. While we can talk about the needs of investors, we should also consider those who create economic activity - companies, entrepreneurs, young people with creative ideas - and their need for capital. In the long run, the value of assets in the economy is dependent on the underlying economy: a poor economy will depress assets and increase the risk of losses. At a time of uncertainty and volatility, an increased focus on the investor obscures the vital need for capital as described above. We can collectively focus on the value and protection of investor assets, and be poorer in the long run because we didn't focus on where investment is needed to create sustained economic prosperity.

To summarise, there are legitimate concerns over the costs of these proposals and their effect – on our industry and the economy in general. Improving performance reporting is laudable as a business strategy but is it a regulator matter? And should it be a priority in a setting where uncertainty is high and volatility increasing? Regulators have many challenges in our modern, complex world, and with complexity comes the need to consider unintended consequences and to discern what is needed from the perspective of the whole, not just the part.

Thank you for reading these comments. I appreciate that you have to balance many perspectives and so I wish you all well in sorting through these matters.

Sincerely

D'Arcy Mackenzie
Chief Financial Officer
Pope & Company Limited