Erez Blumberger
416-966-2004 x 235
erez@aumlaw.com

March 4, 2014

VIA EMAIL

Alberta Securities Commission
Autorité des marchés financiers
British Columbia Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
Financial and Consumer Services Commission (New Brunswick)
Manitoba Securities Commission
Nova Scotia Securities Commission
Ontario Securities Commission
Securities Commission of Newfoundland and Labrador
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Nunavut
Superintendent of Securities, Yukon

John Stevenson, Secretary
Ontario Securities Commission
20 Queen Street West
Suite 1900, Box 55
Toronto, Ontario
M5H 3S8

Email: comments@osc.gov.on.ca

Me Anne-Marie Beaudoin
Corporate Secretary
Autorité des marchés financiers
800, square Victoria, 22e étage
C.P. 246, tour de la Bourse
Montréal (Québec) H4Z 1G3

Email: consultation-en-cours@lautorite.qc.ca

Re: Response to Canadian Securities Administrators ("CSA") Notice and Request for Comment re Proposed Amendments to National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* ("NI 31-103") Published December 5, 2013

Dear Sirs/Mesdames:

AUM Law Professional Corporation ("AUM Law") is a boutique corporate and securities law firm focused in the areas of registration and compliance, investment fund formation and asset management, and corporate finance. We provide registration and compliance legal services primarily to small and mid-sized registrants with assets under management of less than $1B. The comments in this letter regarding the recently published proposed amendments to NI 31-103 reflect issues that directly impact the registrants we service. Though this letter represents the views of Erez Blumberger, Adam Braun and Richard Roskies, who are lawyers at AUM Law, this letter represents their personal views and not the views of AUM Law and is submitted

AUM Law Professional Corporation
175 Bloor Street East, Suite 303, South Tower
Toronto, Ontario M4W 3R8 Canada
Tel: 416.966.2004 Fax: 866.627.2299
www.aumlaw.com

without prejudice to any position that has or may in the future be taken by AUM Law on its behalf or on behalf of its clients.

With regard to the proposed amendments, we have the following comments:

1. **Requirement that Chief Compliance Officer ("CCO") of mutual fund dealers, scholarship plan dealers and exempt market dealers ("EMDs") have 12 months of relevant securities industry experience in the 36-month period before applying for registration**

In light of the regulatory compliance issues arising in certain segments of the EMD population it is understandable that the CSA is proposing to set a new minimum standard for a CCO designate to possess at least 12 months of relevant securities experience in the 36 months prior to applying for registration with an EMD. However, we are very concerned that this requirement will have the effect of narrowing the potential pool of acceptable CCO candidates and, in turn, act counter to the latest CSA efforts and initiatives to enhance capital raising for small and medium size entities in the exempt market.

A narrower pool of acceptable CCOs will most certainly raise the cost of hiring candidates to fill positions to prohibitive levels for smaller registrants. Accordingly, we recommend that as *quid pro quo* for the current proposal the CSA permit EMDs to hire external qualified compliance personnel. The cost to hire an outsourced CCO (who could hold a CCO position in two or more unaffiliated registrants) can be significantly less than a salaried in-house CCO (that can be devoted only to one firm), thus providing a viable alternative for EMDs that wish to pursue this option.

An outsourced CCO would of course have to meet the requisite compliance expertise and competence requirements, would be familiar with industry best practices and would be subject to regulatory and reputational business risk. Potential conflicts of interest would be manageable, and could be considered by CSA staff as part of the registration process - in much the same way that other conflicts of interest are considered today. Most importantly, the CSA would achieve its goal of enhancing compliance with securities law obligations and ensuring investor protection, in a manner consistent with its goal of facilitating capital raising in the exempt market.

We understand that this approach is recognized in the US securities regulatory regime and we strongly recommend that serious consideration be given to this model for the Canadian regime.

2. **Introduction of "business locations" in National Instrument 33-109 *Registration Information* ("NI 33-109")**

The proposed amendments to NI 33-109 introduce a definition of "business location" in section 1.1 that confirms a business location includes "a registered individual's residence if regular and ongoing activity that requires registration is carried out from the residence or if records relating to an activity that requires registration are kept at the residence." Further, the amendments include a certification requiring that if a business location is a residence, the individual would consent to regulators entering the residence for the administration of securities legislation and derivatives legislation.

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We recommend companion policy language be added to NI 33-109, explaining when "records related to an activity that requires registration" triggers the business location definition. On a plain reading of this amendment, this can be a very low threshold. Given advances in technology, it is not uncommon for registered individuals to maintain a home office where they will have identical access to the firm's documents and records as if they were at the firm's registered office. In fact, a home office may be a key component to a firm's business continuity plan. Accordingly, we envision companion policy language to the effect that if the residence does not maintain any additional documentation beyond that which is kept at the firm's registered offices, and, that no regular and ongoing registrable activity occurs at the residence, then it is not viewed as a "business location" for purposes of this provision.

3. Amendments to Section 7.1 Dealer Categories – Restriction for EMDs trading in listed securities

(i) In light of the proposed amendments to section 7.1 of NI 31-103, we recommend that the CSA provide guidance in the companion policy or elsewhere regarding the permissible manner for EMDs to manage an on-going client relationship where the EMD facilitated an initial trade for a client through the exempt market and the client subsequently approached the EMD with a request that it facilitate the subsequent sale of such securities. If the securities are not listed or subject to a hold period then our understanding is that the EMD can facilitate the resale. However, if the securities subject to the initial trade become freely tradable due to the expiration of the applicable hold/seasoning period and become listed within the language of proposed section 7.1, it is not clear what an EMD can tell its client regarding the subsequent resale and still be onside with the proposed new section 7.1. If the EMD in the above scenario is permitted to refer its clients to an investment dealer, this should be clearly set out in companion policy guidance or other comfort to ensure that such a referral would not be seen as an act in furtherance of a trade in light of the proposed removal of clause 7.2(2)(d)(iii) from NI 31-103.

(ii) The companion policy states that EMDs "are not permitted to participate in a distribution of securities offered under a prospectus." Does this preclude an EMD from participation in a special warrant transaction? It would be helpful if the CSA take this opportunity to clarify its position in this regard (i.e., whether special warrant transactions are an exception to the prohibition against EMDs engaging in underwriting activities).

4. Investment Fund Manager Registration relief for General Partners of Limited Partnerships

We would like to take this opportunity to seek clarification from the CSA on commentary in section 7.3 of the companion policy to NI 31-103. Such commentary sets out that investment fund complexes may have more than one entity within the fund complex that can be considered as conducting registrable activity as an investment fund manager and exemptive relief may be required to provide certainty in respect of an investment fund complex's registration obligations. In our experience, it is common practice for investment funds that are organized as limited partnerships to create a corporate entity to act as general partner for that limited partnership. The general partner will then enter into an investment management agreement

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with a registered investment fund in the fund complex to direct the business, operations and affairs of the limited partnership/fund.

The above structuring approach is fairly commonplace in the industry. We seek confirmation that the setting up of the general partner and the delegation of all its oversight activities does not, in and of itself, trigger the investment fund manager registration obligation so long as this is done in keeping with the commentary in section 7.3 of the current companion policy. Put another way, is it the CSA position that a formal exemptive relief application from the investment fund manager registration requirement needs to be filed in connection with the activities of each new general partner in a fund family complex? If so, could an exemptive application be worded to cover both existing and future investment funds managed in one fund complex, subject to conditions?

5. Introduction of streamlined mechanism for filing notices under Sections 11.9 and 11.10 of NI 31-103

We welcome amendments to section 11.9 and 11.10 of NI 31-103. However, in light of the revisions to these sections, we believe further clarification is required in connection with an estate freeze and other tax-driven transactions whose effective date precedes the filing of the notice. These types of transactions often involve an effective date that reflects the last available valuation date of the securities in question. As mentioned, that valuation date may precede the present day period in which the registrant is reporting the transaction - in a timely and *bona fide* manner. We have observed in practice that such notices often lead to questions being raised by the regulator around the timeliness of the filing and, in some cases, lead to an involved dialogue that we suggest could be addressed through guidance that recognizes these types of tax-driven transactions. This would enhance the efficiency of the 11.9/10 review process for industry and staff alike.

6. Trades through or to a Registered Dealer – Section 8.5

We support the proposed amendment to codify that certain trades to or through a registered dealer need not be made "solely" through or to the registrant. We suggest that this is a good opportunity to codify that an issuer is not precluded from relying on this exemption when it has made an advertisement (i.e., an act in furtherance of a trade) and subsequently consummated the trade through a registered dealer. Any clarity in this area would most certainly facilitate the raising of capital by small and medium size entities directly or through registrant involvement.

7. Trades through Registered Dealer by Registered Adviser - Section 8.5.1

We appreciate the added guidance for registered advisers provided by this new exemption. In the context of this proposed amendment, it would be very helpful to understand the CSA's view on a registered adviser purchasing pooled fund units for its managed accounts (but not qualifying for the exemption in section 8.6 because they are not the investment fund manager). We submit that meaningful investor protection is not added when a registered adviser firm and registered advising representative is required to add an EMD license considering the significantly higher licensing thresholds imposed on advising firms and representatives relative to EMD firms and representatives. However, the regulatory costs of the additional EMD license are not insignificant. In light of the CSA's recent efforts to reduce regulatory cost of compliance and

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enhance capital raising, we strongly urge that consideration be given to adding a section to 8.5.1 (or section 8.6) that provides relief for registered advising firms in the scenario contemplated above. We appreciate that this may be the subject of a fresh comment period and recommend that it be considered as part of the recent amendment proposals to remove the managed account carve-out in the definition of Accredited Investor found in National Instrument 45-106 *Prospectus and Registration Exemptions*. Ideally, this enhancement would apply in every jurisdiction of Canada, notwithstanding that the managed account carve-out is an Ontario only proposed amendment.

8. On-Going Work - Recognition of additional examinations or inclusion of alternative proficiency requirements in Part 3 [*Registration requirements - individuals*] of NI 31-103

We support the CSA's plan to develop a process to recognize additional examinations, and other proficiency requirements as alternatives to the proficiency requirements in Part 3 of NI 31-103.

Recognition of alternative examinations

We believe it would be beneficial for the industry to have a streamlined process to recognize "alternative" examinations such as the Chartered Alternative Investment Analyst exam, other than through the rule amendment process. We appreciate that there are certain legislative rule-making considerations involved with this proposed approach but encourage the CSA to continue to find creative ways to recognize examinations other than through a full and lengthy rule making comment process.

This makes particular sense for the registration regime, considering that the Director's designate, rather than the Commission proper, has discretion to recognize alternative examination in lieu of the required examinations set out in Part 3 of NI 31-103, when considering firm and individual registrations. We submit that this should be considered relevant to the rule-making considerations in this area. We submit that "omnibus" orders in Ontario and blanket orders in other jurisdictions are potential vehicles for practical real-time recognition of alternative examinations.

Enhanced Transparency for relief through National Registration Database

It would also be beneficial to have any exemptive relief to individuals from proficiency obligations made more transparent to the industry. Currently, this relief is transacted through the National Registration Database (NRD) with no order or ruling publicly released to reflect the particulars of the relief granted. This is a more opaque process than relief granted pursuant to the formal application process, which results in published rulings and orders per National Policy 11-203 *Process for Exemptive Relief Application*.

We believe that bringing more transparency to relief issued through NRD would result in significant efficiencies for both the CSA and the industry because firms could access precedent situations and be more readily informed of scenarios where alternative examinations, experience and proficiencies have been granted pursuant to relief from the requirements in Part 3 of NI 31-103. Enhanced transparency in this area, would allow firms to more accurately assess the proficiency of their individuals and the likelihood that they will be successfully registered, and to act accordingly. Moreover, it would give firms and their counsel more information upon which to base submissions to staff, thereby streamlining the iterative comment process and the time taken to receive (or withdraw) the relief requested. In this regard, we appreciate the CSA's

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work to release a comprehensive notice on relevant investment management experience in January 2013 (and the proposal, in this round of amendments, to elevate this commentary to companion policy guidance). What we are proposing is that NRD relief be issued in real time by, for example, posting a notice on a section of the regulator(s) website detailing the facts of a particular situation, (this could be on a no-names basis) and the disposition made by staff. Like an exemptive relief order or ruling, a draft of the website notice could be prepared by the filer and submitted as part of the NRD relief process. Accordingly, this process would not significantly increase staff time, other than the time necessary to review the notice and place it on the site (perhaps weekly), while, at the same time, significantly enhancing the NRD relief process.

Thank you for the opportunity to provide the comments above. If you have any questions, please do not hesitate to contact me.

Regards,

Erez Blumberger
Chief Regulatory Counsel
416.966.2004 x 235
erez@aumlaw.com

copy:
Adam Braun
Legal Counsel
416.966.2004 x 222
adam@aumlaw.com

Richard Roskies
Legal Counsel
416.966.2004 x 230
richard@aumlaw.com

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