March 5, 2014

Via Electronic Mail

British Columbia Securities Commission
Alberta Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
The Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
Financial and Consumer Services Commission of New Brunswick
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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Re: Proposed Amendments to National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations

Dear Madame Beaudoin and Mr. Stevenson,

The Investment Adviser Association (IAA)[1] welcomes the opportunity to comment on Proposed Amendments to National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations. The IAA is a not-for-profit U.S. association that represents the interests of investment adviser firms registered with the U.S. Securities and Exchange Commission (SEC). The IAA's members manage assets for a wide variety of institutional and

[1] For more information, please visit our website: www.investmentadviser.org.

individual clients, including pension plans, trusts, investment funds, endowments, foundations, and corporations. Many of our members manage assets on behalf of clients in Canada and some of our members are located in Canada.

We appreciate and support the efforts of the Canadian Securities Administrators (CSA) to provide increased uniformity in the areas of registration and regulation of investment advisers. The IAA is providing comments we believe the CSA should consider in adopting any proposed changes.

Support for Increased Uniformity for the International Sub-Adviser Exemption

The proposed International Sub-Adviser Exemption would establish a new uniform exemption from registration for international sub-advisers providing advisory services in Canada to lead advisers or dealers registered under NI 31-103, provided the sub-adviser meets the following criteria: (1) the sub-adviser and the registered adviser enter into a written agreement, (2) the registered adviser in turn enters into a written agreement with its clients whereby it agrees to be responsible for any losses arising out of the sub-adviser's failure to provide its services honestly, in good faith and in a reasonable manner, and (3) the sub-adviser has no direct interaction with clients without the registered adviser also being present or capable of real-time participation ("chaperoning"). The sub-advisers must also be headquartered in a foreign jurisdiction, be registered or exempt from registration in that jurisdiction, and act as an adviser there.

The IAA supports the increased uniformity that the proposed international sub-adviser exemption will provide. The exemption will provide a practical means by which foreign sub-advisory firms can more easily provide their expertise to the Canadian markets while helping ensure that the ultimate Canadian investors are adequately protected. The lead advisers will be appropriately incentivized to perform substantive due diligence on foreign sub-advisers under this provision because they will have contractually agreed with their own clients to cover losses stemming from malfeasance on the part of the sub-adviser and the sub-adviser will remain subject to their oversight.

The IAA recognizes that any uniform sub-adviser exemption should incorporate investor protections. We respectfully submit, however, that the CSA reconsider the chaperoning requirements, which may hamper investor-desired communications with foreign sub-advisers regarding their portfolios. It is costly and burdensome to establish structures and procedures to implement the chaperoning requirements. Further, we are not aware of problems caused by sub-adviser communications in jurisdictions that do not currently require chaperoning, such as Quebec and Ontario. As noted above, under the sub-adviser exemption, the lead adviser is entirely responsible for a sub-adviser's breach of its duties of good faith and due care, and thus must develop policies and procedures to supervise the sub-adviser's activities, including oral and written communications with clients. Specific chaperoning requirements add little in the way of additional investor protection, while creating significant logistical burdens, and indirect costs, when the ultimate client wants to discuss matters such as portfolio performance with the sub-adviser by requiring either three-party in-person meetings or phone calls. Moreover, because the chaperoning requirement also extends to written communications, and the proposed Companion

Policy suggests that sub-advisers may not send communications directly to the registrant's clients but rather, such communications must come from the registrant itself (*e.g.*, the sub-adviser would not be permitted to communicate directly and copy the registrant on the communication), international sub-advisers may face additional burdens in meeting regulatory disclosure delivery and other reporting requirements of their home jurisdiction.

Support for Registered Sub-adviser Relief

The CSA proposes to revise section 13.17, which limits client obligations of registered sub-advisers under the conditions outlined above in the proposed international sub-adviser exemption: (1) a written agreement between the registered lead adviser and the sub-adviser; (2) a written agreement between the lead adviser and its clients whereby the lead adviser assumes responsibility for sub-adviser breaches of good faith and due care duties; and (3) chaperoning.

The CSA proposes relief whereby a registered sub-adviser taking such steps would be exempt from certain requirements with respect to its relationship with the client/lead adviser—such as identifying and responding to conflicts of interest, providing certain notices, and responding to complaints. The IAA supports this proposed relief because, as the CSA appropriately recognizes, the dynamic between a sub-adviser and a registered lead adviser is fundamentally different from typical relationships between investment advisers and their clients. The relationship benefits from the higher level of sophistication of both parties, the cooperative efforts by both parties on behalf of third-party clients, and the obligations already shouldered by the lead adviser. These criteria help ensure that the lead adviser is both capable and incentivized to perform necessary due diligence so as to protect its own interests when hiring a qualified sub-adviser. Thus, the relief appropriately streamlines or eliminates certain requirements that are unnecessary, or are duplicative of obligations already required of the lead adviser with respect to its clients.

Concerns Regarding Impact of Amendments to International Adviser and International Sub-Adviser Exemptions on Registrants

The IAA opposes proposed sections 8.22.2 and 8.26.2, which would prohibit use of the international adviser exemption for any advisers that are already registered in one province and seek to provide advisory services in another province. These international advisers would otherwise be eligible to avail themselves of the exemption if they were not already registered in one province. The IAA is also concerned that the proposed international sub-adviser exemption would only be available to those advisers that are not registered in any Canadian jurisdiction.[2]

There are many legitimate reasons why an adviser would be registered in one jurisdiction and then seek to take advantage of the exemption in another province. For example, an international adviser may choose to register in a jurisdiction where it serves one or more very large clients, but also advises or sub-advises a few accounts in other jurisdictions where it relies on the exemption. Similarly, a Canadian-registered firm may have certain clients that insist on

[2] We are also concerned with respect to the parallel proposal regarding the international dealer exemption, as an adviser's affiliated entity may rely on the exemption in one or more provinces to conduct certain marketing activities of non-Canadian funds managed by the adviser.

registration in their jurisdiction while clients in other jurisdictions do not. Or, sub-advisers may want to have direct contact with a client in one province but are willing to work through a lead adviser with others in other provinces.

Given these legitimate and varied reasons, there is no compelling policy reason to prevent international registrants from availing themselves of the exemption solely because of registration in one jurisdiction. The CSA made the policy decision to adopt an international adviser exemption with substantial conditions, including a maximum threshold of 10% of aggregated gross income from Canadian portfolio management activities. We are aware of no evidence that an adviser that is registered in one province would pose investor protection issues by acting in an exempt capacity in another jurisdiction. The CSA cited potential investor confusion, but provides no empirical evidence of such issues. In fact, NI 31-103 already requires advisers relying on the international adviser exemption to provide notice to investors in the provinces in which they claim the exemption informing them of their exempt status. If investors are found to be confused by this situation, transparency and disclosure are more tailored, cost-effective solutions than registration in multiple provinces.

While Canadian investors would not be advantaged by requiring otherwise unneeded registration, the proposal would impose additional burdens on those entities that are already subject to Canadian regulation. Indeed, registrants' additional registration burdens may be challenging and costly. Advisers would be required to pay additional fees and expend time and resources complying with non-uniform requirements or uniform requirements implemented differently in various provinces. For example, there may be additional requirements for individual portfolio managers in one jurisdiction but not others. Both firms and individual managers may face significant financial, time, and other burdens trying to meet each province's proficiency standards, and other specific requests. Certain provinces apply their own perspective in reviewing firms' policies and procedures upon registration or thereafter. An investment advisory firm registered in a province that has accepted one set of policies and procedures may have to assess whether to take the significant step of adapting its policies and procedures to another province's requirements, comments, or particularities.

For these reasons, many registered firms may contemplate limiting Canadian business or even deregistration to utilize the international adviser or sub-adviser exemptions. This result would disadvantage smaller Canadian clients or clients in smaller provinces if advisers choose not to register in order to service a one-off or small client in a province that requires another set of registrations. These other Canadian clients may thus be deprived needlessly of specialized expertise offered by U.S. or other international advisers or sub-advisers. Accordingly, we strongly urge the CSA not to adopt proposed sections 8.22.2 and 8.26.2.

Support for Reversion Back to "Permitted Client" Conditions for the International Adviser Exemption

Under current rules adopted in 2011, an "international adviser" availing itself of the international adviser exemption may only advise "Canadian permitted clients." Thus various categories of otherwise permitted clients must have Canadian citizenship or residency (for individuals) or Canadian incorporation or organization (for corporations and other business

entities). The 2011 change was more restrictive than had been originally intended. All of the CSA members, other than the Ontario Securities Commission, have issued parallel orders that allow a person to rely on these exemptions as if the term "Canadian permitted client" read "permitted client." The CSA now seeks, through the proposed changes, to formally revise sections 8.18 (international dealer) and 8.26 (international adviser) to revert back to the less restrictive "permitted client" conditions in these exemptions that were in force prior to July 11, 2011. The IAA supports these proposed revisions to sections 8.18 and 8.26 to reverse the inadvertent negative effects of the 2011 amendments for the reasons stated by the CSA.

In response to Ontario's specific request for comment, we are not aware of circumstances where these exemptions are being used by foreign entities located in Canada to provide services to investors outside of Canada. While we understand Ontario's interest in trying to preserve its jurisdiction from disrepute caused by potential abuse of its international exemption, we believe Ontario's concerns are remote and would not be impacted by the proposed change. In any event, if there is a possible fraud operating out of its jurisdiction against foreign permitted clients, Ontario would have at its disposal all of its legal and regulatory tools to take appropriate action.

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We appreciate the opportunity to provide our views on these issues and would be pleased to provide any additional information. Please contact Paul Glenn or me at (202) 293-4222 with any questions regarding these matters. Thank you for considering our views.

Respectfully Submitted,

Karen L. Barr
General Counsel