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BY E-MAIL

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Alberta Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
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
Superintendent of Securities, Yukon Territory
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Nunavut

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Dear Sirs / Mesdames,

Re: Comments on Proposed Amendments to National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations and related consequential amendments.

We submit the following comments in response to the Notice and Request for Comments (the "**Request for Comments**") published by the Canadian Securities Administrators (the "**CSA**") on December 5, 2013 with respect to proposed

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amendments (the "**Proposed Amendments**") to National Instrument - 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations ("**NI 31-103**"), Companion Policy 31-103CP - Registration Requirements, Exemptions and Ongoing Registrant Obligations ("**NI 31-103CP**"), National Instrument 33-109 - Registration Information ("**NI 33-109**") and its appended forms, Companion Policy 33-109CP- Registration Information ("**NI 33-109CP**"), National Instrument 52-107 - Acceptable Accounting Principles and Auditing Standards and Companion Policy 52-107CP - Acceptable Accounting Principles and Auditing Standards.

We have organized our comments below with reference to the proposed rules, policies or forms to which the comments relate. All references to parts and sections are to the relevant parts or sections of the applicable rule, policy or form.

Thank you for the opportunity to comment on the Proposed Amendments. This letter represents the general comments of certain individual members of our securities practice group (and not those of the firm generally or any client of the firm) and are submitted without prejudice to any position taken or that may be taken by our firm on its own behalf or on behalf of any client.

A. Amendments to NI 31-103 and NI 31-103CP

Part 1 Interpretation

Section 1.3 [Fundamental concepts] of NI 31-103CP

While we appreciate the CSA's attempt to provide clarification on the application of the business trigger to start-up issuers, we submit that the proposed commentary should not be limited to that context only. For example, in the proposed amendments to NI 31-103CP with respect to start-ups, it is proposed to be stated that "[i]f the trading and soliciting is for the purpose of advancing the business, then the frequency of the activities alone should not result in the issuer being in the business of trading in securities." We see no reason why such guidance should be restricted to start-up issuers only and suggest that it would be appropriate, and helpful, for issuers generally which have an active non-securities business and for non-Canadian entities who do not carry on a securities business in Canada. With respect to the latter, we have serious concerns that to consider otherwise would result in an overly broad and potential extraterritorial application of the registration trigger to activities that are outside the jurisdiction of provincial securities regulators.

We have the same comment on the proposed new commentary that acknowledges that "many [start-up] issuers actively solicit through officers, directors or other employees" and the CSA would "likely find these individuals to be in the business of trading if:

- the principal purpose of their employment is raising capital,
- they spend the majority of their time raising capital, or

- any of their remuneration is tied to their capital raising activities."

Since NI 31-103CP states that "[s]ecurities issuers may also have to register as a dealer if they…solicit investors actively…," in our view, the proposed new commentary would, again, be appropriate and helpful on a broader basis to provide the same comfort to all issuers with a non-securities business and to non-Canadian entities who do not carry on an active securities business in Canada.

Part 3 Registration requirements – individuals

Section 3.10 - CCO experience requirements for EMDs

We have concerns with the proposed changes to add a 12-month experience requirement under section 3.10 in respect of a chief compliance officer for an exempt market dealer ("**EMD**"). While we acknowledge the concerns expressed by the CSA in proposing this additional requirement, we also urge the CSA to consider the issue in the context of the EMD category and the resources available to a majority of registrants that occupy this category. EMDs are often comprised of organizations with very few employed personnel. Further, given the nature of the category, an EMD's business, organization, structure and method of operations may vary significantly from those of other firms in the category. In that respect, we do not necessarily agree that experience with one business will necessary translate into more proficiency or compliance at another business. In our view, implementation of such a requirement will impose a significant burden on such businesses, in that it will be very difficult to find a CCO with the relevant experience and accordingly very costly even when a suitable candidate is available. It also effectively restricts start-ups which may be staffed by persons who are otherwise proficient and capable. Finally, in our view, the additional requirement is too onerous given the restricted type of activity that an EMD is permitted to engage in and the additional limitations introduced under the Proposed Amendments.

Part 7 Categories of registration for firms

Section 7.1 [Dealer categories]

Generally, we do not agree with the proposed amendments to section 7.1. In our view, the broad-based restrictions proposed to be implemented go beyond what is necessary to address the CSA's concerns with the use of the EMD category of registration. We respectfully submit that the rationale underlying the EMD category was originally to permit EMDs to provide services with respect to "accredited investors" on the basis that compliance with full investment dealer requirements was not necessary given the nature of such investors. As we understood, the category was premised on the narrow scope of investors to whom the EMD would provide services, and not on the nature of the activities/services themselves. The alternative of registration as a full-service investment dealer is not a practical and/or viable option for most EMDs given the nature and scope of their operations and services. The result, in our view, will be to reduce the range of choices available to Canadian investors and to render the marketplace less competitive.

Further, we request the CSA to provide clear guidance on activities that do not comprise trading or acts in furtherance of a trade in order to avoid confusion and interpretational issues going forward. This is particularly important for those which have structured their activities around the existing EMD registration in order to have clarity and assurance regarding the types of services they may continue to provide.

Part 8 - Exemptions from the requirement to register

Sections 8.0.1, 8.22.2 and 8.26.2 -- removal of exemptions for registrants for activities that can be conducted under their registration

We do not agree with the proposed amendments to these sections. Primarily, the proposed limitation ignores the fact that a firm, or different operational divisions within a firm, may carry out different lines of business in different jurisdictions or with different categories of clients and/or be limited in terms of the services it provides in a particular jurisdiction or with a particular class of clients, and therefore may justifiably need to rely on a different category of registration or exemption. For non-resident firms, this is particularly an issue for larger asset managers/ financial services groups with multiple divisions across a number of geographic locations. Further, the proposed restriction is so broadly framed that it would make any type of registration exemption unavailable and may give rise to various unintended consequences which the regulators may not have adequately canvassed. In our view, such a blanket restriction is too broad and ignores the nuances among activities underlying different types of exemptions, such as section 8.5 and proposed section 8.5.1 [Trades through or to a registered dealer or adviser], 8.21 [Specified Debt], proposed section 8.22.1 [Short-term debt] and section 8.25 [Advising generally].

In our view, the risk of client confusion is minimal, since clients are provided with clear and separate disclosures with respect to exempt and registered firm activities. If required, additional disclosure requirements could be implemented as an alternative to restricting reliance on the exemption altogether.

Section 8.5 [Trades through or to a registered dealer] and Section 8.5.1 [Trades through a registered dealer by registered adviser]

We do not agree with the proposed amendments to section 8.5 and the addition of the new section 8.5.1. The amendment to prohibit a person seeking to rely on the exemption from "soliciting or contacting directly" any purchaser or prospective purchaser is unduly restrictive and impractical. While we acknowledge the policy rationale underlying the prohibition, in our view, it goes much further than what is required and in many respects will render the exemption unworkable.

As currently drafted, the exemption would prohibit the person or company seeking to rely on it from having any contact with the prospective investor, regardless of the nature of that contact. This would include, for example, transmission, review, negotiation and acceptance of correspondence and documentation, responding to unsolicited communications and participating in a

meeting or being on a call where the investor also participates. We submit that this restriction ignores the practical reality of how these types of relationships are managed and how business is conducted, and goes beyond what is necessary to provide adequate investor protection. In particular, it disregards the investor relations/administrative aspects of these relationships that do require such direct contacts. This could arise, for example, where a foreign entity may have relationship with, or may have met the prospective investor in a different context that does not trigger any registration requirement, such as a non-offering related presentation or meeting. By way of further example, with respect to foreign fund offerings, fund managers may make presentations or meet with investors to explain their particular brand or strategy without discussing any particular investments. Any such contact would effectively preclude their ability to rely on section 8.5. Further, the person seeking to rely on the exemption may need to be present during meetings or calls between the prospective investor and the Canadian client. The proposed restriction also ignores the fact that the prospective investor may wish to meet the parties they are engaging with to satisfy their own diligence requirements or concerns and to negotiate the terms of definitive agreements.

Requiring the participation of a registrant provides the requisite investor protection, including by addressing a broad range of investor protection issues such as proficiency, know-your-client and suitability, etc. Since these requirements would be addressed, we do not see the need for added protection through a blanket prohibition of any type of contact and submit that limited contact should be permissible. In fact, the prohibition makes the exemption unworkable in many respects, including with respect to diligence, necessary meetings, and negotiating and settling required documentation. At a minimum, we submit that section 8.5 and proposed section 8.5.1 should include an accommodation to permit the transmission, negotiation and settlement of documentation and client relations/ administrative-type contacts etc., between the parties. It is also unclear how the prohibition works in light of unsolicited enquiries as it would prohibit a person from responding, in any manner, to an unsolicited enquiry (even, for example, to inform a prospective investor that they will be contacted by the registered dealer in respect to their enquiry and to obtain the prospective investor's consent to such contact).

Given the significant distortions which may be introduced by the proposed amendments to section 8.5 and the proposed new section 8.5.1, we would recommend that the CSA simply maintain the existing policy guidance under section 8.5 of NI 31-103CP and not proceed with such proposals.

Proposed section 8.22.1 [Short-term debt]

Unless the CSA have any significant and particular concerns with the use of this exemption, we see no need to restrict its application to permitted clients only. In particular, given that the exemption requires the securities to have a prescribed rating, we do not agree that any the additional restriction is necessary.

Section 8.26.1 [International sub-adviser]

We commend the CSA's efforts to harmonize and codify this exemption under NI 31-103. However, we submit that the proposed restriction in section 8.21.1(c) prohibiting a sub-adviser from having direct contact with the registered adviser's or dealer's clients is unnecessary and impractical. This restriction is not included in the current exemptions available in Ontario and Quebec, nor is it consistently applied in the discretionary exemptions issued in other jurisdictions. Existing sub-advisory arrangements have already been structured on the basis of the current exemption conditions. In many cases, these are long-standing arrangements that have not been problematic and would have to be restructured to comply with the new restrictions. We further submit that sub-advisory arrangements are employed in a range of different contexts, including with respect to investment fund portfolios, and in many such circumstances the proposed restrictions are either unworkable or not necessary. For example, in the context of an investment fund where the client is the investment fund itself, we do not understand how the restriction prohibiting the sub-adviser from contacting the fund could even apply. The restriction also ignores the fact that in a wide range of circumstances, including but not limited to the investment fund context, the client may want or need to meet directly with the sub-adviser (including, at a minimum, for service provider due diligence requirements or to negotiate definitive agreements).

Part 11 Internal controls and systems

Sections 11.9 [Registrant acquiring a registered firm's securities or assets] and 11.10 [Registered firm whose securities are acquired]

We appreciate the proposed amendments to sections 11.9 and 11.10 that attempt to clarify when the notice requirement applies. To avoid ambiguity and interpretational issues with concepts such as "beneficial ownership," we urge the CSA to also provide clarification on the application of the requirements to non-corporate structures, such as trusts and partnerships.

Further, we note that the proposed amendments to these sections also extend the notice requirement to the acquisition of an interest in a "firm registered in any foreign jurisdiction" and request clarification on why the CSA consider it necessary for a person to notify the CSA of the acquisition of a foreign registrant if the firm is not engaged in any registrable activity in Canada. To the extent that any such requirement is retained, we urge the CSA to clarify as to what exactly is intended by "registered in a foreign jurisdiction" since foreign registration is often not necessarily comparable (in terms of scope or category, etc.) to Canadian registration.

We also urge the CSA to ensure that the proposed procedural change requiring that a section 11.9 or 11.10 notice be filed only with the principal regulator will not have the effect of causing undesirable delays in the regulatory review process, (for example, if a non-principal regulator receives the notice at a later date and objects to a proposed acquisition later than it would have done under the

existing rules.) The current practice of filing concurrently with all interested regulators does not seem to be problematic.

Section 12.14 [Delivering financial information -- investment fund manager]

We note that under the proposed amendments to section 12.14, the reference made is to "net asset value adjustment" whereas the proposed Form 31-103F4 refers to both "net asset value adjustments" and "NAV errors." Further, the term "NAV error" is not defined. To the extent the use of the term "NAV error" in the proposed form is intentional, a corresponding reporting requirement should also be set out in NI 31-103 and a definition provided for what constitutes a "NAV error" in order to avoid confusion and any interpretational issues. For these purposes, we refer you to Investment Funds Institute of Canada ("**IFIC**") Bulletin Number 22 (Updated December 2009) which defines an NAV error "…as an NAV differential that arises from a breach of the standard of care." (See IFIC's Guidelines for Correction of Portfolio NAV Errors, Section 1 - "Determining if there has been an Error".) At a minimum, we submit that the term should be subject to a materiality threshold.

Part 13 Dealing with clients -- individuals and firms

Section 13.4 [Identifying and responding to conflicts of interest]

Proposed section 13.17 [Exemption from certain requirements for registered sub-advisers]

We generally agree with the exemption for registered sub-advisers set out in proposed section 13.17. However, we reiterate the same comments made above with respect to proposed section 8.26.1 with respect to the requirement under proposed section 13.17(2)(c) and the prohibition against having direct contact with the client. The proposed restriction is unrealistic and unworkable. Further, the proposed exceptions to the direct contact restriction do not alleviate the issues that the restriction would give rise to, and ignore the fact that the client may want to meet directly with the sub-adviser, e.g. to satisfy its own diligence requirements or to negotiate definitive agreements. In our view, the more appropriate means of addressing the CSA's regulatory concerns would be to retain, instead, the types of safeguards built into OSC Rule 35-502 – Non-Resident Advisers, which require the registrant to retain responsibility with respect to the client.

With respect to the new commentary proposed to be added to section 13.4 of NI 31-103CP under "Individuals who have outside business activities," we have concerns that the examples cited (roles where the individual is in a position of power or influence) are overly broad and vague, and will lead to interpretational differences and uncertainties.

B. Summary and purpose of the proposed amendments to NI 33-109, NI 33-109CP and the Forms

In respect of the proposed amendments to Form 33-109F4, we have similar concerns as set out above with respect to the requirement to include "positions of influence" under section 10 – "Current employment, other business activities, officer positions held and directorships," in that the requirement is overly broad and vague and will give rise to interpretational issues and a lack of consistent application.

Thank you for the opportunity to comment on these proposals.

Regards,

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